

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26028
Docket Number MW-25977

Marty E. Zusman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The sixty (60) days of suspension imposed upon Track Foreman A. H. Sullivan for alleged responsibility for the injury he sustained on April 15, 1983 was without just and sufficient cause and on the basis of unproven charges.

2. The charge leveled against the claimant shall be removed from his record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was a Track Foreman with Section Gang 8 working in the evening of April 15, 1983, when he sustained an injury to his eye. By letter of May 6, 1983, Claimant was notified to attend a Hearing which was later rescheduled and held on May 13, 1983. In pertinent part that letter stated that the Hearing would be held:

"to determine the facts and your responsibility, if any, in connection with your injury which occurred at approximately 8:45 p.m., April 15, 1983, while you were engaged in track work in the vicinity of WR Interlocking Plant in Granite City, Illinois."

Following the Hearing the Claimant was notified by letter of May 26, 1983 that he had been found guilty of violating several Safety Rules necessary to avoid injury including a failure to wear goggles. Claimant was suspended from service for sixty (60) days.

The General Chairman contends that the Carrier violated Rule 24, wherein it failed to notify the employe of the specific charge and allowed statements at the Hearing over Safety Rules to be used against the employe which were never listed in the letter of charge. Based upon this procedural violation, the Organization requests that the Claimant's discipline be removed with all rights unimpaired. The Carrier denied that it violated any Agreement Rule.

With respect to the procedural issue raised by the Organization, this Board has carefully reviewed the Rule, the letter of charge and the arguments raised on property. There is no evidence in the record to substantiate a Rule violation on the part of the Carrier. The charge was very specific and cannot be construed in such manner as to suggest that the Claimant would be unaware of the purpose of the Hearing or unable to prepare an adequate defense. The charge clearly advises of the specific incident, time, date, place and the purpose to determine responsibility in connection with the eye injury. In

view of these facts and in consideration of Rule 24, this Board finds no Rule violation.

As for the Claimant's responsibility in the aforementioned eye injury the record substantiates the Carrier's determination of guilt in the failure of Claimant to wear his goggles. The Track Supervisor indicated that the men had been instructed to wear goggles when they were around metal striking metal or to turn their backs to it. Claimant was aware of the Rule and had instructed his men correctly. Claimant however neither was wearing his Safety Glasses nor did he have them with him as he walked up to supervise the hammering. Those involved in the hammering were either wearing glasses or had turned their backs. Claimant's failure was in clear violation of known Rules.

As such, with substantial evidence to warrant conclusion of guilt, and no violation of due process, the only issue before this Board to be resolved is whether Carrier has imposed reasonable discipline. This Board has often evaluated the discipline to determine whether it was progressive and commensurate with the Rule violation. With respect to the instant case, a review of the record as handled on property does not provide any basis for this Board to conclude that the discipline was progressive. Finding no evidence of record that this was anything other than Claimant's very first offense, this Board finds the quantum of discipline to be unwarranted. While the Claimant clearly violated the Rule, the real damage in this instant case is without doubt known to the Claimant and not made more clear by heavier discipline. Therefore, while not denegrating guilt, this Board rules that the Claimant's sixty (60) day suspension be reduced to thirty (30) day suspension. Wage loss compensation is not involved in this Claim as the Claimant was medically restricted at the time, and dismissed as not properly before this Board.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

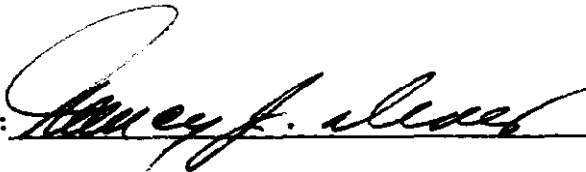
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.