

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21078

Docket Number MW-20961

Francis X. Quinn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company)

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

(1) The suspension of Grinder Operator S. L. Davis for thirty days effective September 20, 1973 was without just and sufficient cause and on the basis of unproven charges (Carrier's file MW-MOB-73-20).

(2) The provisions of the following quoted Rule 20(g) now be applied to the claimant:

"If the charge against the employe is not sustained, it shall be stricken from the record. If by reason of such unsustained charge the employe has been removed from position held, reinstatement will be made and payment allowed for the assigned working hours actually lost while out of the service of the railroad company at not less than the rate of pay of position formerly held or for the difference in the rate of pay earned, if in the service or otherwise employed."

OPINION OF BOARD: The clear and uncontroverted facts are that the grievant was observed by two Supervisors engaging in a grinding operation with only safety glasses for eye protection. His helper was wearing proper safety goggles. The grievant was made fully aware of the fact that safety glasses were not proper eye protection for the performance of the instant work. Yet, within the period of time it took for the Supervisors to instruct claimant and to return to him with safety goggles, he ignored their instructions and operated the machine without prescribed eye protection. There was basis for discipline.

A complete review of the record however indicates that thirty days suspension was excessive. We will reduce the discipline imposed to fifteen (15) days.

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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 Agreement was violated in part.

A W A R D

Claim sustained in part. Discipline imposed is reduced to fifteen (15) days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1976,