

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25535
Docket Number MW-25472

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad
(Former Colorado and Southern Railway Company)

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

(1) The Carrier violated the Agreement when it suspended Trackman K. L. Garcia for one (1) day (August 4, 1982) without benefit of an investigation (System File C-34-82).

(2) The claimant shall be allowed ten (10) hours of pay at his straight time rate.

OPINION OF BOARD: The Claimant, a Trackman, reported to work on August 4, 1982, without his hard hat, which he said he had forgotten at home. The Claimant was not permitted to begin work and was sent home by the Supervisor.

The Organization argues that the Carrier's refusal to allow the Claimant to begin work on August 4, 1982, constituted a one-day suspension. Since suspension is a disciplinary action by the Carrier, the employee was entitled to the procedures required under Rule 26(a) of the Agreement which provide that an investigation be held. Because there was no investigation, the Organization argues that the Carrier violated Rule 26(a) and the Claimant should be compensated for the lost time. The Organization also argues that the Carrier had extra hard hats available, one of which should have been given to the Claimant.

The Carrier's position is that the refusal to let the Claimant work without a hard hat did not constitute discipline. Employees had been informed at numerous safety meetings that no employee would be allowed to commence duty without proper safety gear, including a hard hat. The Carrier's policy was to replace hard hats only if they were lost, damaged, or worn out, but not to replace hats which had been left at home. The Carrier would not supply a hard hat to the Claimant because the spare hats which were available had broken headbands which made them unsafe for use.

It is undisputed that the Claimant had been warned by the Carrier that he was required to report for work with his hard hat. The Claimant's only explanation for his failure to do so was that he forgot his hat at home. His hat was neither lost, nor damaged, nor worn. Given all the surrounding circumstances, this Board is convinced that the Carrier's action cannot be viewed as disciplinary. This ruling is consistent with Board precedents which have held that a Carrier has not taken disciplinary action when it refuses to let an employee begin work who has not complied with the Carrier's known policies. (See Awards No. 24895, 22904, 23294.) Carrier's refusal to permit the Claimant to work on August 4, 1982, without a hard hat did not constitute a suspension, and, therefore, the Carrier did not violate Rule 26(a).

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

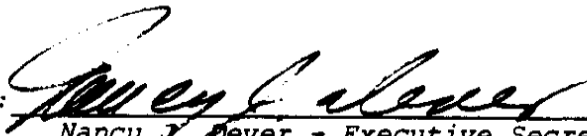
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1985.

