

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37460  
Docket No. MW-38068  
05-3-03-3-515

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Consolidated Rail Corporation)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) days suspension] assessed Mr. J. L. Welsh for alleged violation of Conrail Safety Rules 4.3.1-4.4 for allegedly performing duties without proper personal protective equipment (safety equipment) at approximately 12:50 P.M. on Friday, November 15, 2002 at the Ann Street B&B Shop was arbitrary, capricious, excessive, without merit and in violation of the Agreement (Carrier’s File MW-0055D).
- (2) As a consequence of the violation referred to in Part (1) above, the aforesaid discipline shall be stricken from Mr. J. L. Welsh’s record and he shall “be compensated on a make whole basis for any and all time that he lost because of the unjust decision by the Carrier.”

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the relevant time, the Claimant - an employee since September 27, 2000 - held a Welder's position. Supervisor of Structures J. F. Kaminski testified that on November 15, 2002, he observed the Claimant cutting a length of two-inch galvanized fence post with a portable band saw; while performing that function, the Claimant was not wearing safety glasses; Kaminski asked the Claimant why he was not wearing safety glasses and the Claimant responded "because they were in the truck"; the Claimant's truck was 60 feet away from where he was working; Kaminski instructed the Claimant to put on a hard hat and his safety glasses and told him that there might be disciplinary action for failure to comply with Safety Rules; and the Claimant responded "[t]hen do what you have to do."

The Claimant testified that although he had his hard hat with him, he was not wearing it and, with respect to his safety glasses, "I should have had my glasses on, but I lost them . . . I shouldn't have done what I did. I was wrong."

After an Investigation and by notice dated January 22, 2003, the Carrier suspended the Claimant for 30 days for failing to follow Safety Rules.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. Safety Rule 4.3.1 provides:

"Follow these general eye protection requirements:

1. While you are on duty, protect your vision by wearing safety eyewear that is clean, properly fitted, and equipped with factory-installed, permanent side shields.
2. While in a work area, do not remove safety eye protection unless absolutely necessary to de-fog, clean, or change. Be

careful to keep interior surfaces of safety eye protection free of particles and debris.”

Rule 4.4 requires that employees “[w]ear a safety helmet (hard hat) while on duty.” Rule 4.4.1 requires that “Maintenance and Engineering work requires a safety helmet at all times, in all locations.”

The Claimant admits that while working on November 15, 2002, he was not wearing his helmet and safety glasses in violation of the Safety Rules (“I was wrong”). Substantial evidence therefore supports the Carrier’s decision to impose discipline.

Under the circumstances, we cannot say that a 30-day suspension was arbitrary. The purpose of discipline is to send a corrective message to employees so they understand that they must conform their conduct to the Carrier’s Rules. Although admitting “I was wrong” by not wearing the required safety equipment, the Claimant’s testimony at the Hearing leaves us with the distinct impression that he really did not believe that he had to wear that equipment. The Claimant testified:

“... I’ve been using that specific tool for twenty years. I’m very skilled with it. I know how to use it safely. . . . [O]n occasion, when I’m home and I don’t have safety goggles handy, I might cut a piece of pipe with a saw. I don’t think nothing of it. . . . I knew I could cut that piece of pipe safe without getting anything in my eyes. . . .”

Given that testimony, we find that the Claimant needed a strong message that while what he does at home is his own business, while he is working for the Carrier he must follow the Carrier’s Rules - and those Rules require that he wear the appropriate safety equipment. A 30-day suspension will send that corrective message to the Claimant and is therefore not arbitrary.

The Organization’s procedural arguments have been considered and do not change the result.

**Form 1**  
**Page 4**

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**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 19th day of April 2005.**