

PUBLIC LAW BOARD NUMBER 3530

Award Number: 67
Case Number: 67

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Section Laborer, C. C. Crocker, P. O. Box 1092, Petersburg, VA 23803, was assessed a 30 day actual suspension for alleged violation of N & W Safety Rule 1042 - not wearing his safety glasses. Claim was handled in accordance with the Railway Labor Act and agreement provisions. Employees request pay for time lost and all rights unimpaired.

FINDINGS

Claimant was employed as a Section Laborer at Petersburg, Virginia. By letter dated November 8, 1984, Claimant was notified to attend an investigation concerning charges that he violated Safety Rule 1042 on November 5, 1984 by failing to wear safety glasses while performing his duties. An investigation was held on November 28, 1984. By letter dated December 6, 1984, Claimant was assessed a 30 day suspension on the basis of the charges.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The Organization contends that Claimant did not intentionally violate Safety Rule 1042. The Organization cites Claimant's testimony that his

glasses kept slipping, thereby impairing his vision and his ability to perform his duties. The Organization further cites his testimony that the glasses were off for only "two or three seconds." The Organization cites the testimony of two other employees working with Claimant, S. Yates and J. Hawkins to confirm that Claimant only removed the glasses once during his tour of duty. The Organization contends that in light of the defective fit of the glasses and the relatively minor nature of the violation, the 30 day suspension was grossly excessive.

Carrier contends that no question exists concerning Claimant's violation of the rule on November 5, 1984. Carrier cites Claimant's own testimony that he admitted to not wearing the glasses while performing duties and that the rule violation was firmly established at the investigation.

Carrier further contends that the 30 day suspension imposed was reasonable in light of the serious nature of the violation and Claimant's prior rule violations. Carrier cites the fact that on three prior occasions Claimant has been disciplined for failing to wear his safety glasses and argues that under the circumstances, a 30 day suspension was necessary to educate Claimant as to the importance of wearing the glasses.

Finally, Carrier argues that Claimant's excuse for removing the glasses lacks persuasiveness. Carrier cites Claimant's testimony that he knew elastic bands were available to remedy the "slipping" problem and yet had neglected to procure them. Carrier further argues that Claimant's problem

with the glasses were his own doing and that he exercised poor judgment in not having the glasses fixed.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

We find that no genuine dispute of fact exists in the present case. Claimant admitted to not wearing the glasses while performing duty, in clear violation of the rule. The only questions remaining are whether Claimant was justified in failing to wear the glasses and, if not, whether the discipline imposed was excessive.

Regarding the first question, we find that Claimant was not justified in removing the glasses. If Claimant felt that the glasses were impairing his ability to perform work, he had a duty to remove the glasses and correct the defect before resuming work. Claimant admitted in his testimony that such repair would have been possible if he had obtained the elastic bands. In any event, we find no excuse for Claimant's removal of the glasses while continuing to do work.

Finally, we find that the discipline imposed was not excessive. Claimant had been disciplined on three prior occasions for failing to wear

the glasses, but he evidently had not learned the importance of wearing them at all times while performing duty. Carrier properly instituted a series of progressive discipline, including the present one, in order to instruct Claimant as to the importance of wearing the glasses. Failure to wear the glasses jeopardizes Claimant's eyesight and subjects Carrier to potential liability. In light of the serious nature of the offense and Claimant's prior rule violations, we find that Carrier acted within its discretion in imposing the 30 day suspension.

AWARD

Claim denied.

Nicholas Ruma's
Neutral Member
W. L. Allman, Jr.
Carrier Member
Bruce S. Hall
Organization Member

DATE: 1-29-88