Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13597
Docket No. 13477
01-2-99-2-78

The Second Division consisted of the regular members and in addition Referee Ann. S. Kenis when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
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(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated April 23, 1998 the Carrier arbitrarily, capriciously and unjustly suspended Machinist Sicard for thirty (30) working days after an investigation held on March 26, 1998.

2. Accordingly, the decision should be reversed, Machinist Sicard exonerated of the charge(s), his record and personnel files cleared of any reference thereto. And he be made whole for any and all losses suffered as a result of Carrier's arbitrary, capricious and unjust actions, including but not limited to, time spent at formal Investigation/Hearing of March 26, 1998."

FINDINGS:

The Second 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.

The Claimant had been assigned on the evening of March 5, 1998 to clean out the turntable pit at the Waterville Shop. While performing this assignment, the Claimant removed a four-foot long bar and placed it near the edge of the pit. The Claimant proceeded to finish the cleaning. His Supervisor, Mr. Moore, walked by the area and noticed that a bar was lying in an area he considered to be a walkway. According to Supervisor Moore, the bar was approximately three to five feet from the turntable pit and was situated so that it was on a foot path used by employees going from the engine house to the service pit. Moore issued the Claimant a STOP notice pursuant to Carrier's Safety Training & Observation Program reflecting the Claimant's failure to comply with Safety Rule 14.

On March 18, 1998, the Claimant was directed to attend a Hearing in connection with the same charge. Rule 14 reads: "Aisleways, walkways, yard leads, steps and driveways must be kept free of debris, tools, equipment and other material." Specifically, the Claimant was charged with leaving a bar in the walkway around the perimeter of the turntable pit on March 5, 1998.

The Claimant admitted at the Investigation Hearing that he placed the bar outside the pit but denied that it was in an unsafe position. He testified that the bar was not more than two feet from the turntable pit. Moreover, he stated that the area where the bar was placed was not designated as a walkway. On the contrary, he testified that the turntable is surrounded by tracks which must be stepped over to reach the pit.

Following the Hearing Investigation, the Claimant was found responsible for violating Rule 14 and was issued a three-day suspension. The Organization challenges the discipline on due process grounds and on the merits. A determination on the due process issues is unnecessary since the Board finds that the Carrier failed to meet its burden of proving the Claimant's misconduct.

Our conclusion is based on three key points. First, the evidence adduced on this record, including the representative drawings submitted by the parties during the Hearing, show that the turntable pit is not surrounded by a walkway, aisleway, driveway, yard lead, steps, or anything else described in Rule 14. The parties acknowledge that there is a foot path that employees use informally as a short cut, but the Carrier did not establish that such a path is within the meaning of Rule 14. The Rule lists the specific areas which must be kept free of debris, tools, equipment and materials. If the Board were to accept the Carrier's position, we would necessarily have to include any and all areas of Carrier

property where employees set foot. It is not within the province of the Board to broaden the Rule so as to include areas of Carrier property which are not specifically enumerated.

Second, the Board concludes that the Claimant was in the process of performing his work assignment when he removed the bar, along with other debris, from the pit. The Claimant was cited before he even had an opportunity to get out of the pit to clean up and dispose of the items that had been removed.

Third, although there is a dispute as to the relative position of the bar outside the pit, we are ultimately unconvinced that the Claimant's actions created a tripping hazard. Employees walking past the turntable pit would need to veer far enough away from the pit to avoid falling in. In fact, Supervisor Moore conceded that the path taken by employees was more than six feet and perhaps even ten feet away from the turntable pit. When the Claimant reached up and placed the bar next to the turntable pit, the evidence shows that it could not have been located more than a few feet, certainly not more than an arm's length away from the edge of the pit.

Given all the foregoing circumstances, we find that the Carrier has failed in its burden to support the disciplinary action. We therefore must rule to sustain the instant claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of May, 2001.