

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and Northwestern Transportation Company violated the current agreement when on November 13, 1984 Electrician Brian Lewis was dismissed from service without being provided a fair and impartial hearing.

2. That the Chicago and Northwestern Transportation Company violated the current agreement when on November 13, 1984 Electrician Brian Lewis was unjustly dismissed from service of the Carrier account of "your responsibility in connection with bringing false information into the investigation held on September 18, 1984 at Chicago, Illinois."

3. That the Chicago and Northwestern Transportation Company reinstate Claimant Brian Lewis to service with seniority rights unimpaired and to make him whole for all lost wages, vacation, insurance, railroad retirement rights and benefits lost because of the Carrier's unjust action beginning November 13, 1984 and all other losses to be accompanied with interest on the money amount at the rate of 14%.

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 employees 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 waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as an Electrician in the Engineering Department of Carrier's Suburban Division. On September 18, 1984, Claimant attended a formal Investigation concerning his alleged violation of Carrier's Safety Rules when performing service without safety glasses on August 29, 1984. In that case Claimant was assessed discipline of sixty days actual suspension, later reduced to thirty-five days actual suspension. Claim for removal of that discipline was progressed to this Board and disposed of by Award No. 11116 of this Division.

On October 1, 1984 Claimant was notified to attend another Investigation, scheduled for 10:30 A.M., October 5, 1984, on the charge:

"Your responsibility in connection with bringing false information into the investigation held on September 18, 1984."

After a number of postponements, Investigation on the charge of October 1, 1984, was conducted on November 5, 1984, following which Claimant was dismissed from service on November 13, 1984. The record shows that Claimant was restored to service without pay for time lost on March 25, 1986.

A copy of the Transcript of the Investigation conducted on November 5, 1984, has been made a part of the record. Numerous objections were raised by Claimant's representative prior to and during the Investigation of November 5, 1984. We have considered the objections raised and find none of them or all of them of sufficient significance to invalidate the proceedings. The charge against the Claimant was sufficiently precise to enable the Claimant and his representative to prepare a defense. Although the Investigation may not have been conducted in an exemplary manner, Claimant was not denied any substantive rights. The offer of the Hearing Officer to recess the Investigation until other witnesses could be present was reasonable.

We can agree that the Carrier has the right to expect truthful testimony from employees during Investigation proceedings. However, conflicts in testimony in discipline cases are not unusual. This Board has generally held that it will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Hearing Officer. This principle was recognized in Award No. 11116. Each case of the nature here involved must be decided on the record developed. We consider the facts in the present case to be entirely different from those involved in Award No. 31 of Special Board of Adjustment No. 924, and apparently different from the facts involved in Award No. 6 of Public Law Board No. 2006.

In the present case, the Board finds that discipline was warranted; however, the time that Claimant was withheld from service, from November 13, 1984, to March 25, 1986, constituted excessive discipline. We will award that Claimant be paid for all time lost in excess of ninety days, or from February 13, 1985, to March 25, 1986, with compensation computed strictly in accordance with the provisions of the applicable Agreement.

Form 1
Page 3

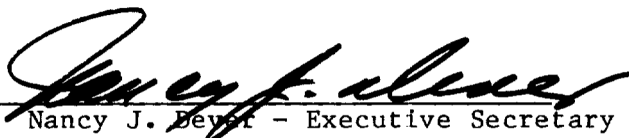
Award No. 11182
Docket No. 11234
2-C&NW-EW-'87

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.