

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12768
Docket No. 12594
94-2-92-2-168

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division
(Transportation Communication Union
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"1. That the Kansas City Southern Railway Company violated the agreement, particularly Rule 29, when Carman A.G. Henderson was suspended from service for a period of 60 days.

2. That accordingly, the Kansas City Southern Railway Company be ordered to make Carman A.G. Henderson whole for all lost time, including the day of the investigation, and all other negotiated benefits and overtime he would have been entitled to."

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 waived right of appearance of hearing thereon.

Claimant was employed by Carrier as a Carman at its facility in Shreveport, Louisiana. On April 30, 1991, while working on the Shreveport Rip Track, Claimant sustained an injury (sprained ankle) when stopping a trackmobile. Claimant was hospitalized for a short period and lost three days of work. On May 6, 1991, he was advised by Carrier to be present for a formal Investigation into the matter. That letter is quoted below:

"Please arrange to be present in the office of Superintendent of Cars, Kansas City Southern Railway Co., 4601 Blanchard Road, Shreveport, LA 71107, at 9:00 a.m., May 16, 1991, for a formal investigation to ascertain the facts and determine your responsibility, if any, in connection with an injury allegedly sustained by you on April 30, 1991, at the Shreveport Rip Track and in connection with your injury proneness, as indicated by the personal injuries allegedly sustained by you during your employment with this Company, reports of which will be reviewed at this investigation.

The Carrier will have as witnesses E.R. Swain, Special Representative Car Dept., A.J. Jackson, Carman C.A. Turner, Car Foreman, and C.H. Greig, Superintendent of Safety."

The Investigation was held on May 30, 1991. As a result of that Investigation, Claimant was found to be responsible for his injury and he was assessed a sixty-day Suspension, in a letter sent to him on July 12, 1991. The letter stated:

"Reference to formal investigation held May 30, 1991, in the Office of Superintendent of Cars, Kansas City Southern Railway Co., 4601 Blanchard Road, Shreveport, LA, to ascertain the facts and determine your responsibility, if any, in connection with an injury allegedly sustained by you on April 30, 1991, at the Shreveport Rip Track and in connection with your injury proneness, as indicated by the personal injuries allegedly sustained by you during your employment with this Company.

After a complete review of the transcript of the investigation, it is my determination that you are responsible for the injury you allegedly sustained on April 30, 1991. This is to advise that you are being suspended from the service of The Kansas City Southern Railway Company for a period of sixty (60) days."

This Board has reviewed the record before it and has concluded that Claimant received a full and fair hearing and that he was responsible for spraining his ankle as he stepped off the track mobile. Given this finding, it is appropriate that Claimant receive some level of discipline and that he be put on notice that his safety record, as outlined in the record, is not good.

In issuing a sixty-day suspension, however, Carrier put considerable "overkill" in the penalty assessment process. As this Board has pointed out many times in the past, discipline of employees should be instructive and, under most conditions, progressive rather than punitive. It is this Board's opinion that a sixty-day Suspension is arbitrary and capricious and exceedingly punitive. Carrier can make its point in this case by assessing a five-day Suspension with a letter to Claimant addressing his responsibility to work safely in the future. The sixty-day suspension shall be reduced to a five-day suspension. Claimant shall be reimbursed for fifty-five days pay at the appropriate straight time rate.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

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 17th day of November 1994.