

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12933
Docket No. 12869
95-2-94-2-8

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/
(Transportation Communications
(International Union
(
(Springfield Terminal Railway Company
((Maine Central Division)

STATEMENT OF CLAIM:

- "1. That the Springfield Terminal Railway Company (hereinafter referred to as the Carrier) violated the terms of the current controlling Agreement specifically Rule No. 32, when it arbitrarily suspended Carman A. R. Higgins (hereinafter referred to as the Claimant) from active service and assessed a ten (10) day actual suspension as a result of investigation held on July 14, 1992.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate the Claimant in the amount of eight hours pay for each workday he was withheld from service, a total of ten (10) days suspension, not including any overtime the Claimant was deprived of during this suspension.
3. That this discipline be expunged from the Claimant's personal record and that he be made whole for any other benefits he would have earned during his suspension time."

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 at hearing thereon.

Claimant is employed by Carrier as a Carman with twenty-six years of discipline free service. At the time of the occurrence he was regularly assigned to Carrier's Waterville, Maine, repair facility.

On June 26, 1992, Carrier was operating with a reduced force of Carmen due to a strike - lockout on major carriers that interchange traffic with it. Carrier received a request from one of its paper mill customers for an immediate supply of clean box cars for loading. In order to supply the cars, it was necessary for Carrier to work its 6 Carmen overtime.

Carrier asked all 6 Carmen to work overtime; 3 accepted and 3 turned it down. Carrier then issued a direct order for the 3 to work overtime. Claimant refused and left the property.

Notice was issued to Claimant on July 1, 1992, to attend a formal Investigation on July 14, 1992, on charges of insubordination.

Investigation was held as scheduled and on August 6, 1992, Carrier advised Claimant he had been found "responsible as charged" and assessed a 10 calendar day suspension.

Appeal of the discipline was filed by the Organization and handled to a conclusion on the property without satisfactory disposition. It is now before this Board for final adjudication.

In its submission to this Board, Carrier has raised a procedural issue that the case was not handled "in the usual manner" and in accordance with the requirements of the Agreement on the property. Carrier may well be correct. However, it's citation comes too late. It should have been made during the handling on the property. It was not and this Board cannot consider the issue as it constitutes new material, new argument which is prohibited by Circular No. 1 of the National Railroad Adjustment Board issued in 1936.

Carrier also argues that the dispute was not timely filed with this Board and that we are barred from further consideration of the case. This argument of the Carrier is not supported by the record which shows the claim was denied in writing by Carrier's highest designated officer to handle such claims on April 30, 1993, and the Organization filed the claim with the Board on January 27, 1994, which date is within 9 months of April 30, 1993. Carrier's procedural arguments are dismissed.

Study of the Investigation transcript persuades this Board that Claimant was insubordinate on July 26, 1992, when he refused to work overtime. Claimant must understand that he must obey an order from supervision and grieve later if he believes a problem exists. Some form of discipline was warranted but we are not convinced that a 10 day suspension was proper. We say this for the reason that the Investigation transcript reveals Claimant was experiencing problems with his shoulder, resulting from an accident, requiring him to go to therapy twice a week. The supervisor was well aware of Claimant's problem and Claimant explained he just "couldn't work." Under these conditions, and taking into consideration Claimant's 26 years of discipline-free service, the Board is persuaded that a letter of reprimand would have been sufficient to make the point that insubordination would not be tolerated.

Claimant's suspension is reduced to a letter of reprimand. He shall be made whole for the loss sustained by the 10 calendar day suspension.

AWARD

Claim sustained in accordance with the Findings.

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.

Form 1
Page 4

Award No. 12933
Docket No. 12869
95-2-94-2-8

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.