

**Award No. 2364**

**Docket No. 2178**

**2-NP-EW-'56**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Electrical Workers)**

**NORTHERN PACIFIC RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement, Section Lineman C. J. Lofgren was discriminately treated when he was suspended, beginning October 7, 1954 for 60 days without pay from the service of the Northern Pacific Railway Company.

2. That accordingly the Northern Pacific Railway Company be ordered to restore Section Lineman C. J. Lofgren's seniority, vacation rights and all pay and expenses incurred for all time suspended.

**EMPLOYEES' STATEMENT OF FACTS:** Section Lineman C. J. Lofgren hereinafter referred to as the claimant, was employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, as a section lineman at Ritzville, Washington, on March 19, 1924.

The assigned territory of the claimant is:

"Main Line; Connell, Washington to Cheney, Washington, a distance of 94 miles.

Washington Central Branch:

Cheney, Washington to Coulee City, Washington, a total of 108 miles. Coulee City to Adrian, Washington, a Distance of 20 miles.

Connell Northern Branch:

Connell, Washington to Wheeler, Washington, a distance of 35 miles and Wheeler to Adrian, Washington, a distance of 21 miles."

The total mileage of the claimants' territory is 284 miles. The claimants' headquarters is located at Ritzville, Washington, on the main line which is 45 miles from Connell and 49 miles from Cheney.

discipline; and that the discipline administered was rendered in good faith and was not tainted with bias. Consequently, this Division should not superimpose its judgment upon that of management and remove the discipline administered. The claim covered by this docket should be denied in its entirety.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

Claimant was charged with the failure to properly perform maintenance duties on his assigned territory. He was suspended on October 7, 1954, by the carrier for a period of 60 days. Claimant demanded an investigation on October 13, 1954, pursuant to the provisions of Rule 36 (b). An investigation was held on December 1, 1954. It is the contention of the Organization that carrier failed to make its decision within 15 days following the investigation as required by Rule 37 (a).

The carrier contends that the present Rules 36 and 37 have no application for the reason that they became effective on November 1, 1954, after the events took place which resulted in the 60 day suspension on October 7, 1954. There is no merit to this contention. Matters of procedure convey no vested rights and changes in procedure become effective with the date of the agreement providing the procedural change. An investigation given after November 1, 1954, must be in compliance with the procedures provided for in the agreement of November 1, 1954. Rule 37(a) provides that a decision in writing will be rendered by the carrier within 15 calendar days after the completion of the investigation hearing. The organization contends this was not done.

The record shows that on December 3, 1954, Chairman E. E. Potter of the Electrical Workers wrote the Superintendent of Communications and inquired whether or not claimant's suspension consisted of 60 actual working days. On the same day, December 3, 1954, the carrier's Superintendent of Communications advised the chairman that claimant's suspension was for 60 compensated days beginning October 7, 1954. Carrier asserts this was a decision on the investigation. On the face of the letters it is shown that it was not such a decision. It was merely an answer to the chairman's inquiry as to whether the suspension was on a calendar or actual working day basis. The letter which is claimed to be a decision was nothing more than an answer to the chairman's inquiry. It is evident that no decision was made by the carrier within 15 days as required by Rule 37(a). This being true, we are required to find that no decision was made in writing within 15 days as required by the rule.

The failure to make a decision in writing in 15 days is equivalent to a finding that the charges were not sustained upon the investigation and the claim dismissed. Rule 37(e). We have examined Awards 1497 and 1513 cited by the carrier. We do not disagree with the reasoning therein set forth. We point out, however, that (it is the decision in writing of the carrier from which this employe charged may appeal. He is entitled to a finding on the evidence adduced.) No decision having been made in writing as to the merits of the case as presented at the investigation, an appeal to this Board has been denied him and the suspension has been imposed contrary to Rule 37(e). (It cannot be said that such handling was not prejudicial to the rights of the claimant under the agreement.) We are obliged to say that the suspension of 60 days was improperly imposed.

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The suspension is therefore held to be improper, claimant's seniority and vacation rights will be restored, and claimant will be paid for all time lost resulting from the suspension less what he may have earned in other employment in accordance with Rule 37(d). No expenses can properly be allowed.

**AWARD**

Claim sustained per findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman**  
**Executive Secretary**

**Dated at Chicago, Illinois, this 13th day of December, 1956.**

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