

**Award No. 5623**

**Docket No. 5427**

**2-IC-EW-'69**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'**  
**DEPARTMENT, AFL-CIO (Electrical Workers)**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Carrier violated the current Agreement at Louisville, Kentucky, when it suspended Electrician J. H. Dean prior to his investigation and without proper notice.

2. That the Carrier invoked unwarranted discipline when it suspended Electrician Dean from service for ninety (90) days.

3. That, although, Electrician Dean was restored to service after ninety (90) days of suspension, that the Carrier be ordered to remove any impairment to his seniority rights, vacation rights, payment of his Health, Welfare and Death premiums and compensate him for all time lost.

**EMPLOYEES' STATEMENT OF FACTS:** J. H. Dean, hereinafter referred to as the Claimant, is employed by the Illinois Central Railroad Company, hereinafter referred to as the Carrier, as an Electrician.

Carrier suspended Claimant beginning November 11, 1965, by refusing him the right to come to work pending an investigation. The notice that Claimant was to be investigated was dated November 11, 1965 and did not state that he was suspended pending this investigation. (See page 1 of the transcript of the investigation.)

Carrier failed to prove in the investigation that the charges placed against this Claimant were fact. However, it suspended him for ninety (90) days. (See Employees' Exhibits A and B.)

Furthermore, Carrier reviewed the Claimant's past record, which is a violation of the Rules as it is not a precise charge and the Local Chairman so protested. (See page 3 of the transcript.)

**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.

Parties to said dispute waived right of appearance at hearing thereon.

In our effort to reach a supportable judgment in a case of this kind, we must separate the believable from the unbelievable. This we have endeavored to do. In this respect, we have positive statements from Carrier witnesses that the aggrieved employe was intoxicated and that he used abusive and threatening language to them when he was found asleep while on duty. In response to a question propounded to him by his representative at the investigation, he stated in effect, that he did not recollect anything that allegedly took place until around 10 minutes to 4. This he attributed to medicine he had taken earlier in the afternoon. He made no other defense.

It is recorded in the transcript of the investigation that the claimant became conscious of what was going on about 10 minutes to 4. At about 4:50 P. M., the claimant, Dean, reported at the home of one M. F. Roberts, to do some electrical work he had contracted to do. In an affidavit dated November 12, 1965, Roberts testified that Mrs. Roberts observed that Dean had been drinking. Roberts also testified that he noticed that Dean had been drinking, stating that Dean's eyes were red and his speech was blurred. Roberts further testified that Dean said he had been "caught asleep in the roundhouse . . ." but said nothing about shock or injury. The affidavit taken by Roberts is to the effect that Dean could not locate the electrical trouble he was attempting to remedy and at 6:00 P. M. the work was terminated, with the understanding that Dean would return at 10:00 A. M., Sunday, to complete the work. However, Roberts informed Dean that he should not come back Sunday if he was not sober. There is nothing in the record which contradicts the statements contained in the Roberts' affidavit nor is there anything to indicate that Dean objected to what Roberts said to him about drinking.

As to the letter from Dr. Nichols, it is hardly believable that a physician, without seeing the patient, would prescribe medicine which ". . . can and does produce a drowsiness, a sedative effect and the loss of alertness which would make the patient appear intoxicated . . ." for a man who was on duty, working on poles and handling electrical current.

The preponderance of the evidence introduced by Carrier is believable and it supports the disciplinary action taken.

#### **AWARD**

Claim denied.

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

**ATTEST:** Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1969.  
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