

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employee:

1. That under the terms of the Agreement, The Norfolk and Western Railway Company improperly and unjustly placed charges against Machinist, J. W. Elmore. Investigation was held June 3, 1977 and completed on the same date. On the date of June 14, 1977, he was notified that he was dismissed from all services of the Norfolk and Western Railway Company.
2. That accordingly, The Norfolk and Western Railway Company be ordered to compensate Machinist, J. W. Elmore in the amount of eight (8) hours at the pro rata rate for each day of his work week assignment beginning on the date of June 15, 1977, with 6% annual interest.
3. That the thirty (30) days deferred suspension placed on his record be removed and his service record be made clear of the same.
4. And, further, that he be restored to service with all rights unimpaired, health and welfare benefits restored and paid for during the time he is held out of service and all seniority and vacation rights restored as if he had continued in the employment of the Norfolk and Western Railway Company.

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.

Claimant was charged with two separate, but chronologically related, offenses for his actions on May 27, 1977. These were:

1. Claiming time for work not performed from 1:10 p.m. to 1:30 p.m., for which, after an investigative hearing, Claimant was assessed a thirty-day deferred suspension.
2. Falsifying reason for being off from 1:30 p.m. to 3:00 p.m., for which, following investigative hearing, Claimant was dismissed from service.

The Board finds that the hearing was conducted in a manner to provide the Claimant and his representative full opportunity to present the Claimant's position and that the hearing was free of procedural defect.

As to the charge of claiming 20 minutes' time for work not performed, the Board finds that there is sufficient evidence to show that the Claimant was not at his assigned work place during the 20 minutes in question, but there remains no proof as to whether he had actually left the property or was, as he claims, in a rest room and returning a tool.

As to the matter of the reason for departure at 1:30, it is clear that the Claimant sought and obtained special permission to leave early to attend to a banking problem prior to the closing of the bank. The Carrier obviously permitted the early departure for this sole purpose. From the record, it is clear that the Claimant did not go to the bank, and that at the latest (and possibly earlier) he was aware that the banking problem had already been resolved when he was picked up by his wife at or around 1:30 p.m. It may well have been that, when the request was made for early departure, the Claimant was offering a genuine reason. This does not excuse him, however, for not remedying the situation when he learned the necessity for leaving early had evaporated.

The Board finds, nevertheless, that the penalty of dismissal from service is unduly harsh under the circumstances. In the modification of the penalty, the Claimant should not believe that he has been found innocent of wrongdoing, but rather should look upon his extended suspension without pay as a serious warning against repetition of such action.

Claim sustained to the extent that the 30 days deferred suspension shall be cancelled and removed from the Claimant's personnel record. Claimant shall be reinstated to service with seniority rights unimpaired but without back pay or retroactive benefits, and the period of suspension shall serve as disciplinary penalty for the offenses charged by the Carrier.

A W A R D

Claim sustained as indicated in the Findings.

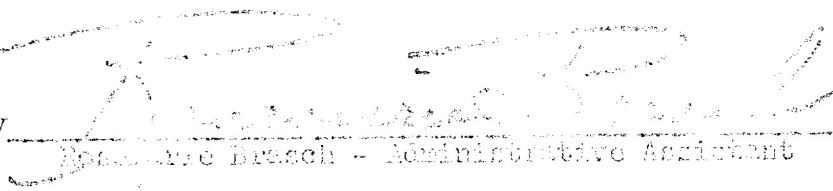
Form 1
Page 3

Award No. 7810
Docket No. 7787
2-N&W-PA-'79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rose Marie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.