Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8034
SECOND DIVISION Docket No. 7943
2-EJ&E-CM-'79

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Elgin, Joliet & Eastern Railway Company

Dispute: Claim of Employes:

1. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the Carrier, improperly suspended Carman Van S. Smith, hereinafter referred to as Claimant, for a one hundred and twenty-two (122) day period commencing August 13, 1977 through December 12, 1977 as a result of an investigation held on July 28 and 29, 1977. Said suspension is in violation of Agreement Rules 100 as well as being arbitrary, capricious, unfair, unjust, unreasonable and an abuse of managerial discretion.

2. That the Carrier be ordered to compensate Claimant for eight hours (8 hours) pay at the pro rata rate for each day of the one hundred and twenty-two day suspension and that Carrier be ordered to clear the Claimant's record of this suspension.

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 originally dismissed from service following an investigative hearing held on July 28, 1977. The proceeding was scheduled to determine his responsibility in connection with his alleged absence from work on June 9, 18, and 23, 1977 and his alleged absence from such assignment on July 8 and 16, 1977 without reporting off.

Because of the organization's appeal and follow up conference on November 29, 1977, carrier subsequently reduced the aforesaid penalty to a 122 calendar day suspension and noted that it would not object if the organization processed a claim for the time claimant lost.

In examining this case, it is important for us at the outset to evaluate carefully the procedural objections raised by claimant regarding the conduct and format of the hearing. The organization claims that carrier failed to advise claimant of the precise rule violations, and permitted the hearing officer to act as judge, jury, prosecutor and witness in the administrative investigation. It concluded that claimant was not afforded a fair and impartial hearing.

Our review of these contentions within the context of the investigative and appeals record does not support these assertions.

Claimant was more than adequately informed of the precise nature of the disciplinary charges to prepare and conduct an intelligent defense and not prejudicially affected by the hearing officer's demeanor.

This Board has consistently held that the explicit articulation of the charges proferred in the notice of discipline is procedurally proper if they alert the claimant as to the nature of the case. See, for example, Second Division Award 6346. Moreover, in the instant dispute there was no indication in the investigative transcript that claimant questioned this supposed defect.

On the other hand, respecting the claim's merits, we do not find after searching review of the record, that claimant complied with the letter and intent of Rule 116(b) when he was absent from the assignments on the dates in issue.

The pattern of events and the blatant inconsistency between his statements that he visited The Hammond Clinic and was treated for an ear infection by a specifically named physician and the Clinic's business manager's written and unrebutted affirmations contradicting and denying these representations is dispositive of the substantive question. The business manager clearly stated in his letter to the Division General Car Foreman that "As I informed you at that time I could find no record of his having been a patient at our clinic at that time. As a matter of fact, Dr. Chael was himself on sick leave during the alleged treatment period having commenced same in January of 1977."

Based on this analysis, we find no rationale basis for concluding otherwise. The suspension penalty imposed was not excessive, arbitrary or an abuse of managerial discretion, when considered against his employment record and, in fact, is somewhat lenient. We will deny the claim.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of August, 1979.