

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 91, Railway Employees'  
 { Department, A. F. of L. - C. I. O.  
 { (Carmen)  
 { Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. (a) That Carman K. L. Counce, hereinafter referred to as the Claimant, Birmingham, Alabama, was improperly withheld from service from September 2, 1976, through November 30, 1976, inclusive, in violation of Rule 34 of the Agreement, and that  
  
(b) Accordingly, the Louisville and Nashville Railroad Company, hereinafter referred to as the Carrier, be ordered to compensate Mr. Counce for all time lost from September 2, 1976, through November 30, 1976, inclusive, including all straight time rates, all overtime that he would have earned, plus 6% interest.
2. (a) That the Carrier is reading into the Agreement that which is not covered when they give "actual days suspension" to it's employees such as the Claimant, that  
  
(b) Accordingly, the Carrier should be advised that such actions as given the Claimant prior to negotiations are improper and not covered by the Agreement.
3. (a) That the Carrier was improper when it failed to apprise the Local Committee of the charge placed against the Claimant or that the Carrier failed to furnish Employees' Exhibits A and B until 375 days after the date of charge, and that  
  
(b) Accordingly, the Carrier should be made to make Mr. Counce whole for all time withheld and to clear Mr. Counce's personal file.

### 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.

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Award No. 8043  
Docket No. 7871  
2-L&N-CM-'79

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 suspended from the service of the Carrier for 90 days for refusing to obey instructions and for leaving the Carrier's premises without permission.

The record reflects that claimant did in fact refuse to obey an instruction from his foreman and then absented himself from the Carrier's premises without permission. A ninety day suspension is not an unreasonable penalty for the offenses. We will deny the claim.

A W A R D

Claim denied.

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 15th day of August, 1979.