Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8255
Docket No. 7668
2-BNI-CM-'80

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employes' Department, A. F. of L. - C. I.O. (Carmen)
(Burlington Northern Inc.

Dispute: Claim of Employes:

1. That Carman D. T. Gomm, Denver, was unjustly treated and the provisions of the current agreement were violated when he was suspended from service for a period of five (5) days, December 16 through December 22, 1975, and a mark of censure was placed on his personal record.

2. That accordingly the Burlington Northern Inc. be ordered to compensate the above named carman eight (8) hours pay for five (5) days December 16-22, 1975, inclusive. Further that the Burlington Northern Inc. be ordered to remove the mark of censure from Carman D. T. Gomm's personal record.

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 assessed five (5) days' suspension following a hearing and investigation held November 17, 1975. Review of the transcript of investigation shows that Carrier adduced substantial evidence to support the charge that Claimant was AWOL on the night of October 27, 1975.

The Organization raises two procedural objections, both of which are unsupported by the record before us. We find no objectionable defect in the notice of hearing since it was sufficiently precise to apprise a reasonable person of the charge against him and enable him to prepare his defense. Regarding the alleged failure to provide the Claimant's representative with a copy of the notice of discipline or transcript, the evidence is in a state of complete stalemate which we are unable to resolve. Such a failure, if proven, is prohibited by the express language of Rule 35 (d) and (e). But we are unable to conclude with any degree of certainty that Carrier was derelict in this case.

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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 5th day of March, 1980.