

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10899
Docket No. 10906
2-NRPC-MA-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (

(National Railroad Passenger Corporation

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation (AMTRAK) be ordered to clear and otherwise expunge the record of Machinist G. Higi of a ten (10) day deferred suspension (held in abeyance) in violation of Rule 28 but not limited thereto, of the prevailing Agreement dated September 1, 1977, as subsequently amended.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

The Claimant is a Machinist employed by the Carrier at its 16th Street Diesel facility, Chicago, Illinois.

In Notice dated December 16, 1983, the Claimant was directed to appear for formal Investigation on December 21, 1983 on charges of alleged failure to comply with (specifically named rules requiring employees to report to duty at the designated time and place, and not being absent from duty without proper authority, and special instructions defining excessive absenteeism to be three or more days off, three late arrivals or three early departures, or any combination of them within a month's time), being absent from duty on November 6, 7 and 20; and late on November 3, 10, 17 and 28. The Investigation was ultimately conducted on January 3, 1984.

The Organization's position in this dispute is two-fold: first, that the Claimant was not afforded a fair and impartial Investigation; second, the Carrier failed to meet its burden of proof.

As to the first, the Organization contends that Rule 24B provides that, quoting from its Submission, "No charge shall be made that involves any offense of which the Carrier had actual knowledge 30 calendar days or more. . . ." Award No. 3 of Public Law Board No. 3409 was referenced by the Organization as being in agreement with its position regarding the 30-day time limit in a similar dispute and this same Carrier. However, that was the end of the reference. Nothing was presented to demonstrate the manner in which the Award would relate to the Claim being tried here. A copy of the Award was not furnished.

In pursuit of its position, the Organization seeks to have the dates of November 3, 6, 7, 10 and 17 stricken from the record; i.e., the Notice of the Investigation was December 16, 1983 and under its theory the 30-day Notice would back date to exclude November 17 and those earlier in that month. However, assuming, without deciding, that the Organization's position is correct, November 17 falls within the 30-day period November 17 to December 16, both dates inclusive, and so do the dates of November 20 and 28, thus the combination outlined in the so called 16th Street Diesel Policy comes into play.

As to the dates in the charges, the Claimant testified that on November 6 he took his wife to the hospital. The absentee log shows the reason for being absent as "sickness." On the 7th he testified that he did call in but talked with the wrong person. His wife was in the hospital and he later produced documentary evidence in support thereof.

On November 20, he called in sick. At the Investigation he testified that he had a bad ear infection. Nothing was offered in support of that testimony.

On November 3 the Claimant was late due to being involved in an automobile accident on entering the expressway. On the 10th he was late due to traffic congestion, lane reduction and construction on the expressway. The same for November 17 and 28. However the Investigating Officer did not enter the 10th into the Transcript, explaining that the call off log was devoid of any caller's name.

As to the Organization's second position, we recognize that the Carrier as the moving party in a discipline case bears the initial burden of proof. We also recognize that when the opposing party contends that the moving party has failed, the burden then shifts, it being incumbent upon the latter to come forth with the probative evidence necessary to support its position. Merely citing the Investigation Transcript and stating that the Carrier has failed is not enough.

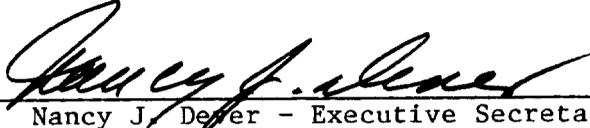
We do not find that the Claimant was not afforded a fair and impartial Investigation. The Claimant was not deprived of any of his rights under the Agreement. Moreover, it cannot be said that the discipline was too severe; instead, it is viewed as mild considering his previous record of absences.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1986.