

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10915
Docket No. 10978
2-NIRCRC-CM-'86

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (Northeast Illinois Regional Commuter Railroad Corporation

Dispute: Claim of Employees:

1. That Coach Cleaner, Otha Alexander, was unjustly suspended from service, by the Northeast Illinois Regional Commuter Railroad Corporation, for a five-day period beginning September 10 through September 14, 1984.

2. That Coach Cleaner, Otha Alexander, be compensated in the amount of eight hours' pay for each of the days of this unjust suspension, beginning with September 10 through September 14, 1984.

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.

Claimant, Otha Alexander, after an Investigation held on August 16, 1984, was suspended for a period of five days, beginning September 10, 1984. He had been charged with:

"Your alleged failure to protect your assignment on Monday, July 30, 1984."

This charge was held to have been proved.

The evidence from the Investigation was uncontroverted. Claimant's father had called the Carrier at 7:15 A.M. on July 30. He stated that the Claimant was ill and could not report to work on that date. The following day Claimant reported to work and when asked stated that his blood pressure had been high and he was too dizzy and too sick to report to work. Claimant admitted that he had not sought medical help. There is no evidence in the record that would cast doubt on the fact that Claimant was ill.

Although there was some evidence at the Investigation that Claimant had previously been counseled for absence, a Carrier letter dated September 26 clearly dismisses this as a factor in the Investigation. The discipline was administered because the Investigating Officer held that the specific charge was proved. The Organization, by letter to the Carrier, stated:

" . . as can be seen from the transcript of the hearing, the charge of not protecting his assignment was not proven, as the claimant did comply with the agreement and notified his foreman that he would be off due to being ill . . . "

Although there were allegations concerning the fairness of the Investigation, the crux of the matter concerns the degree of proof.

During the course of the Investigation, Claimant's Representative asked a Carrier Foreman witness if it was necessary for an employee, absent because of illness, to see a Medical Doctor. The response of the management witness was that he had no knowledge of the policy. No other evidence concerning Carrier policy was tendered.

It is undeniable that Claimant did not protect his assignment in that he was not there to perform the task. However, this rationale would apply to every employee who missed work, no matter what the reason. The point for decision was whether or not absence because of illness without medical attention was an unjustified reason for the failure to protect the assignment. This Board has no way of ascertaining the answer to that crucial question.

The burden is on the Carrier to prove a discipline case. It was in position to offer evidence concerning Carrier policy on criteria for excused absences. This it did not do. We therefore hold that the Carrier did not meet its burden.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1986.