

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation unjustly suspended Electrician Rick Thorpe sixty (60) days effective September 19, 1985 to and including November 17, 1985.

2. That accordingly the Carrier be ordered to restore Electrician Rick Thorpe to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his 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 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.

At the time of the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as an Electrician at the Albany/Rensselaer (New York) Maintenance Facility. On August 12, 1985, Claimant was notified to appear August 16, 1985, for a formal Investigation on the charge:

"Violation of Rule I in the Amtrak Rules of Conduct which states, 'Employees will not be retained in the service who are . . . dishonest . . . ' in that you were observed at approximately 7:53 a.m. on Saturday, August 10, 1985, punching in another employee's timecard."

The Investigation was rescheduled by the Carrier to September 5, 1985, on which date it was conducted, resulting in Claimant being assessed discipline of sixty calendar days suspension, September 19 through November 17, 1985.

Rule 23(b) of the Applicable Agreement reads in part:

"The investigation shall be held at the city of employment within 10 calendar days of the date when notified of the offenses or held from service (subject to one postponement not to exceed 10 calendar days)"

The Notice to Claimant, dated August 16, 1985, by Carrier's Facility Manager, rescheduling the Investigation to September 5, 1985, read:

"Per mutual agreement, your investigation which was scheduled for today at 3:30 p.m. is hereby rescheduled for Thursday, September 5, 1985, at 10:00 a.m."

At the beginning of the Investigation on September 5, 1985, the Representatives of the Organization vigorously protested that the rescheduling to September 5, 1985, was not by mutual agreement and that the Investigation was not timely under Agreement Rule 23.

Under the provisions of Rule 23(b) heretofore quoted, the Carrier had the right to postpone the Investigation for a period not to exceed ten days from August 16, 1985. Any further postponement could only be by mutual agreement. As the Investigation was rescheduled to September 5, 1985, by the Carrier, the burden was on the Carrier to prove that the rescheduling to that date was by mutual agreement.

We find that the charge of August 12, 1985, was sufficiently specific to meet the Agreement requirement. However, upon careful review of the Transcript of the Investigation conducted on September 5, 1985, we find the evidence unconvincing that the rescheduling, or postponement of the investigation to that date was by mutual agreement. In our opinion the evidence is to the contrary.

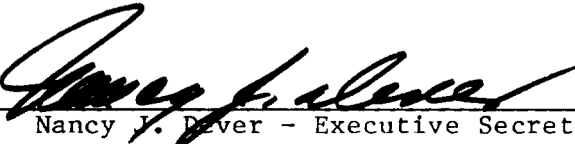
The Investigation of September 5, 1985, was not conducted within the specific time limits of Rule 23(b). The National Railroad Adjustment Board has held in numerous decisions that where time limits for holding Hearings or for rendering decisions have been breached, Carrier's action violates the Agreement and Carrier's disciplinary action must be set aside. First Division Awards Nos. 19378, 16366, 15406.

We will sustain the claim by Awarding that Claimant's record be cleared of the charge and that he be paid for net wages lost during the sixty days suspension, compensation to be computed in accordance with Rule 23(f) of the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.