

The Second Division consisted of the regular members and in addition Referee Paul C. Carter 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 Deborah E. Watts was unjustly suspended from service by the Northeast Illinois Regional Commuter Railroad Corporation for a ten-day actual suspension without pay beginning August 26, 1985 through September 6, 1985.

2. That Coach Cleaner Deborah E. Watts be compensated in the amount of eight hours pay for each of the days of this unjust suspension beginning with August 26 through September 6, 1985.

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 a Coach Cleaner at the Chicago Union Station. Claimant had worked as a Coach Cleaner for the Carrier for about nine years. On June 12, 1985, Claimant was notified of a formal Hearing to be conducted, beginning at 9:00 A.M., June 25, 1985, in connection with:

"Your alleged failure to comply with the Northeast
Illinois Railroad Corporation Employee Conduct
Rules, Form PC-01-RC Rule N-1 and 2, which states:

Employees must not be:

- 1) Careless of the safety of themselves and others.
- 2) Negligent.

When on June 11, 1985 at approximately 1:15 p.m. you attempted to cross over Track 1 located at Chicago Union Station and slipped causing injury to your right ankle."

The Hearing was postponed to July 25, 1985, at which time it commenced, but was recessed due to illness of the Representative. The Hearing was concluded on August 2, 1985. A copy of the Transcript of the Hearing has been made a part of the record. We find that the Hearing was conducted in a fair and impartial manner. Following the Hearing, Claimant was notified on August 4, 1985, of the assessment of discipline of ten days actual suspension "to commence on the date you are released by the doctor to return to work."

In discipline cases the burden is upon the Carrier to produce substantial evidence in support of the charge. The "substantial evidence" rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(Consol. Ed. Co. vs Labor Board 305 U.S., 197, 229.)

(Second Division Awards Nos. 6419, 11171, 11180.)

The matter of proof in the present case gives us concern. The record shows that the Carrier had previously been advised by an Organization Representative of alleged unsafe conditions at the station involved.

Upon careful review of the entire record, we find that the Carrier has not produced substantial evidence in support of the charge. The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1987.