

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: ((International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad is violative of Rule 28 of the August 1, 1977 controlling agreement and has unjustly dealt with and damaged Communications Maintainer R. J. Reilly at North Little Rock, Arkansas when they did not afford him a fair and impartial investigation and assessed discipline of 30-day deferred suspension by letter dated April 9, 1986.

2. That, accordingly, the Missouri Pacific Railroad be ordered to immediately rescind the deferred days assessed Mr. Reilly and remove all material relating to including the transcript of, the investigation from Mr. Reilly's personal records.

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 employes 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 worked the 11 p.m. to 7 a.m. shift on March 5, 1986, as a Communications Maintainer. Claimant could not be located prior to the end of his work shift. When he reappeared at his work station at about 8:30 a.m., Claimant admitted to his supervisor that he had fallen asleep during his lunch break. Following an investigative hearing, Claimant was disciplined with a thirty (30) days deferred suspension for his absence from assigned duties and for sleeping while on duty.

The Organization contends that Claimant was not provided a fair and impartial investigation. We do not agree. The record is clear, by Claimant's own testimony, he was asleep at 6:45 a.m. and at least to 7:00 a.m. (the end of his shift). No weight need be given to testimony about

Claimant's condition prior to 6:45 a.m. in reaching the conclusion that he violated Carrier rules. Additionally, there is no requirement that a hearing officer sequester witnesses. However, not to do so runs the risk that the credibility of those witnesses may subsequently be challenged. However, credibility is not an issue here. Claimant testified that he was in fact away from his work station and asleep.

We conclude from the record of this case that Claimant was provided a fair and impartial investigation, and that he violated Rules B, 602 and 604.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1988.