

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(The Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM:

1. That the Baltimore and Ohio Chicago Terminal Railroad Company arbitrarily and capriciously assessed Electrician Grajek discipline consisting of thirty-five (35) days actual suspension as a result of hearing on May 19, 1987, and

2. That the Baltimore and Ohio Chicago Terminal Railroad Company expunge all mention of the arbitrary and unjust discipline from Electrician Grajek's record, and;

3. That the Baltimore and Ohio Chicago Terminal Railroad Company compensate Electrician Grajek for all time lost as of result of the unjust discipline.

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 were given due notice of hearing thereon.

Claimant was employed by the Carrier as an Electrician at Riverdale, Illinois.

On April 3, 1987, the Claimant was notified by the Carrier to appear for a formal investigation in connection with the following charge:

"You are charged with your responsibility, if any, in connection with failure to properly blue flag locomotive Unit No. 6718 on which you were working at approximately 10:20 a.m. on April 3, 1987, in violation of the Safety Rules on No. 2 middle track at Barr Yard Enginehouse."

After one postponement, the Hearing took place on May 19, 1987. On June 4, 1987, the Carrier notified the Claimant that he had been found guilty of the charge brought against him and was assessed discipline of 30 days' actual suspension, which activated a five days' overhead suspension assessed against Claimant's record on March 24, 1987. The 35 days' actual suspension began as of June 5, 1987, and ran through and including July 9, 1987. Thereafter, the Organization filed a Claim challenging his suspension.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has also reviewed the evidence and testimony, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to properly blue flag his workplace on the date in question. The Claimant actually admitted that he "forgot" to display the blue flag as required.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the degree of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant received a thirty-day suspension which activated a five-day overhead suspension which had previously been assessed against him. This Board finds that degree of discipline unreasonable and excessive given the circumstances. The five-day discipline which was activated was for excessive absenteeism. This was the Claimant's first discipline for a blue flag violation. Therefore, this Board finds that the Claimant should have received a fifteen-day suspension plus the activated five-day overhead suspension. This Board hereby orders that the thirty-five day suspension be reduced to a twenty day suspension, and the Claimant should be made whole for all monies lost as a result of the excessive discipline.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 11946
Docket No. 11703
90-2-88-2-230

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.