

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
(Port Authority Trans-Hudson Corporation

STATEMENT OF CLAIM:

Appeal of dismissal from service of Electrician (Trades Helper-Communications) Kevin J. Sheehan by the Port Authority Trans-Hudson Corporation, effective March 30, 1988.

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 (trades helper - communication) at its New Jersey facility.

On March 1, 1988, the Carrier notified the Claimant that he was to be held out of service effective that date and was directed to appear for a formal Investigation in connection with the following charges:

". . . you have violated Rules 6, 7, and 26 of the
PATH Book of Rules . . .

More specifically, you were observed on Wednesday, February 10, 1988, to be performing activities in a manner inconsistent with the nature of your alleged incapacitation."

After one postponement, the Hearing took place on March 23, 1988. On March 30, 1988, the Carrier notified the Claimant that he had been found guilty of all charges and was assessed discipline of dismissal. Thereafter, the Organization filed a Claim on Claimant's behalf, challenging his dismissal.

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

With respect to the substantive question, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of performing activities that were inconsistent with his alleged chronic back pain. The Claimant was filmed engaging in behavior which made it clear that he was not properly eligible for his medical leave of absence. At no time was the Claimant given the leave of absence to pursue a career in taxidermy. The Carrier has proven its case and the Claimant was deserving of discipline.

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 type 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 was guilty of a very serious offense. However, because there is substantial evidence in the record that he was suffering from some physical injury at the time of his medical leave of absence, this Board is of the belief that dismissing the Claimant was unreasonable.

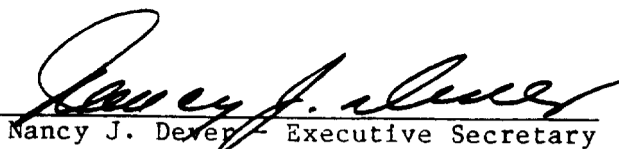
Therefore, this Board finds that the Claimant should be reinstated, but without back pay. He should be immediately sent for physical examination and if he is healthy enough to work, he should be returned to work but without back pay. The period that the Claimant was off shall be treated as a lengthy suspension.

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 16th day of January 1991.