

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12143
Docket No. 11881
91-2-89-2-190

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company violated the current agreement effective December 1, 1985, specifically Rule #26, when they arbitrarily dismissed Equipment Installer Electrician R. M. Villwock from service on January 11, 1989.

2. That the Chicago and North Western Transportation Company reinstate Mr. Villwock to service and make him whole for all wages and benefits lost account of this most unjust and arbitrary action of the Carrier.

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.

The Carrier alleged in its amended charges that Claimant had unauthorized absences on December 9, 1988 from 10:00 A.M. to 11:30 A.M. and on December 16, 1988 from 11:40 A.M. to the end of his tour of duty. The Carrier further alleged that on December 9, 1988, Claimant had utilized a company vehicle without permission while on personal business and subsequently filed a falsified work report claiming those hours as hours worked. Following a formal Investigation held on January 4, 1989, Claimant was notified that he had been found guilty as charged and was dismissed from the service of the Carrier.

The Organization has argued on-the-property that the Claimant was unjustly dismissed. It maintains that the Claimant had fully advised his Supervisor of where he would be on both dates in question. The Organization further argues that the Claimant never submitted a falsified time report to payroll. It contends that the Claimant failed to receive a fair and impartial Hearing.

The Board finds no procedural violation. If the Organization felt that they were unprepared for the testimony of Mr. Grosso, they did not request a postponement. Our review of that testimony and the entire Hearing finds it fair, impartial and in compliance with the Agreement.

Considering the merits, we find substantial probative evidence to support Carrier's findings of guilt to each and every charge. The record supports the conclusion that Claimant's absence on December 9, 1988 was unauthorized. Claimant's Supervisor testified that he had never given permission for the Claimant to be absent on December 9, 1988 from 10:00 A.M. to 11:30 A.M. He further testified that he found out inadvertently that Claimant was absent from his position. The Supervisor stated that Claimant never informed him prior to that date or during their morning teleconference that he had an appointment. In fact, he had informed the Claimant that it was an important day when a major project was occurring. There is no dispute that the Claimant utilized a company vehicle without authority.

There is a great deal of discussion in the record over whether or not the Claimant filed a falsified work report indicating his work on that day. The testimony clearly indicates that Claimant handed his Supervisor a time report indicating that he had performed work during the hours of 10:00 A.M. to 11:30 A.M. on December 9, 1988. His Supervisor testified that when he took exception to Claimant's hours of work on that date, the Claimant stated that "the work report was correct." Although payroll did not receive that report, its submission and existence was a matter of record. The Organization has emphasized a second work report brought to the Investigation. Claimant therein argued the first was only a rough draft. There is no evidence of record supporting any prior practice of rough drafts.

As for events of December 16, 1988, Claimant was informed that he could take care of personal business on his lunch hour. Claimant admits that he did not return to work due to automobile problems. The record is clear that the Claimant made no attempt whatsoever to phone the Carrier. Carrier's findings of guilt in this record are supported with sufficient probative evidence.

The only question left for this Board's consideration is the imposed discipline. Importantly, there is no evidence that the Claimant's work record was ever discussed or considered while this dispute was on the property. Its submission at this time by the Carrier is improper. Absent that information, this Board finds no record as to the Claimant's length of service or past disciplinary record. While the Organization argued on property that the Claimant was a "conscientious and diligent employee," the charges alleging falsification of time reports, unauthorized use of company property and unauthorized absences were serious and proven. We are unable to find the discipline as excessive and will not disturb the Carrier's action.

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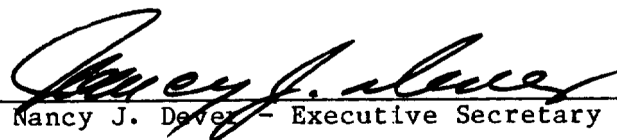
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1991.