

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12157
Docket No. 12152
91-2-91-2-24

The Second Division consisted of the regular members and in addition Referee Hugh Duffy when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

1. That the Southern Pacific Transportation Company (Eastern Lines) violated the controlling agreement, particularly Rule 34, when they arbitrarily assessed a five (5) working day suspension on February 10, 1990 until February 14, 1990 upon Claimant Mr. M. W. Smith.

2. That accordingly, the Southern Pacific Transportation Company, (Eastern Lines) be ordered to compensate Electrician N. W. Smith, at the prevailing rate of pay of electricians at the Houston Locomotive Maintenance Plant for February 10 through February 14, 1990 with all rights unimpaired, personal record cleared of actions taken; applicable overtime in order to make Claimant whole.

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.

Claimant was charged with violating the Carrier's Rule 801 for allegedly hooking up a receptacle improperly by attaching a 100 volt ground wire to one leg of a 200 volt circuit. After a Hearing, Claimant was found guilty as charged and assessed the penalty of a 5-day suspension.

The Organization has raised numerous points in Claimant's behalf, pointing out conflicts in the testimony, noting a lack of eyewitnesses to the alleged infraction, and asserting that Claimant did not receive a fair and impartial Hearing.

After a careful review of the transcript, it is evident that Claimant's representative skillfully and vigorously pursued all avenues of defense open to Claimant during the two-day Hearing. The Organization was not constrained in its cross-examination of the Carrier's witnesses or prevented from calling witnesses. Clearly the Organization pursued all relevant points on behalf of Claimant. It thus cannot fairly be concluded that Claimant did not receive a fair and impartial Hearing.

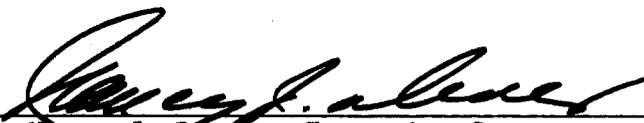
The Carrier's case is admittedly based on circumstantial evidence and there are some conflicts in the testimony given at the Hearing. However, a review of the transcript and the entire record leads the Board to conclude that there was substantive evidence that Claimant was guilty as charged. The Board particularly notes that Claimant was the last employee assigned to work on the equipment, and there was no testimony which would have shown why an unknown person would have tampered with the wiring. Therefore, although there was a degree of conflicting testimony, it has long been established that the trier of facts resolves those conflicts, and we will not disturb the Carrier's findings when they are supported by substantive evidence.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October 1991.