

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. M. Rasheed, Laborer, Chicago, Illinois, was unjustly dealt with when suspended for a period of five (5) days (April 20, 1990 through April 24, 1990), following a hearing held on April 20, 1990.

2. That accordingly, Chicago and North Western Transportation Company be ordered to compensate Mr. Rasheed for all time lost at the pro rata rate and the mark removed from his record.

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 was employed by the Chicago and Northwestern Transportation Company as a laborer at its Proviso, Illinois facility. As a result of an Investigation held on April 10, 1990, from a directive dated March 29, 1990, the Claimant was suspended from service for a period of five days, April 20 through April 24, 1990, for his alleged lack of fuel units 5054 and 3150.

It is the Carrier's contention that the charge was proven against the Claimant in that the Claimant was instructed to fuel the units in question on the date of the charge. The Claimant's testimony is self-serving and clearly contradicted by that of the two supervisors. The Carrier argued that the Claimant has been previously placed on the formal disciplinary system and, therefore, the five-day suspension was in accordance with the Carrier's discipline policy, thus, the five-day disciplinary suspension was proper.

The Organization argued that the five-day suspension for the Claimant was unjust, arbitrary and capricious. The Claimant was given these alleged instructions at 6:30 A.M., and the Claimant's shift ends at 7:00 A.M. It is the Organization's position that the Claimant was told to leave 3150 for the first shift to fuel and that there was no 5054 on the service track on the date in question. The Organization noted that the Carrier also failed to produce any substantial evidence that 5054 and 3150 were not properly fueled. A simple statement from a supervisor which was read into the transcript is unsubstantiated hearsay testimony and has little value. The evidence provided at the Hearing does not support the findings of the Carrier and, therefore, the discipline is inappropriate and the Organization asked that its claim be sustained.

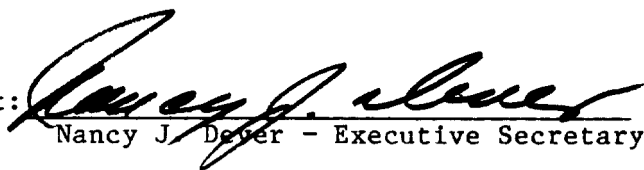
After a complete review of the evidence, the Board finds that the charges against the Claimant have been proven to its satisfaction. The credible testimony proves the Claimant was ordered to fuel the locomotives in question, and the locomotives were not properly fueled causing an unreasonable delay to the Carrier's operation. The Claimant was in the Carrier's disciplinary system previously. The current discipline given to the Claimant was in accordance with the Carrier's disciplinary policy, and the Board can find no reason to substitute its judgment for the judgment of the Carrier and, therefore, the claim will be denied.

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 18th day of December 1991.