

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

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Council Bluffs, Iowa Machinist employee D. L. Smith (hereinafter referred to as the "Claimant") from service for a period of ten (10) days.

2. That accordingly the Carrier compensate Machinist D. L. Smith for all wages lost while suspended and additionally, credit Machinist Smith for time lost for vacation and other benefit rights, and that record of the investigation proceedings, including reference to his unjust discipline, be expunged from his personal 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 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 excessive absenteeism and tardiness for being absent on one occasion and tardy on five other occasions. After a Hearing on September 8, 1990, Claimant was found guilty as charged and assessed a 10-day suspension, the next step in Carrier's progressive discipline system.

The Organization argues that he was denied a fair and impartial Hearing in that he was not allowed to personally cross-examine the Carrier's witness, but could do so only through his representative; had he been allowed to do so, the Organization contends, he would have tried to show that he had been treated in a manner different from other employees.

The Board is in agreement with previous Awards which have upheld the practice on this property of allowing a claimant to freely make statements, but limiting the cross-examination of witnesses to questions by the claimant's representative. A review of the record demonstrates that the Organization conducted a vigorous defense and was able to actively pursue all relevant points on behalf of the Claimant, and that all of the Claimant's rights were well-protected.

As to whether Claimant may have been treated in a different manner from other employees, it is clear from Claimant's statements to the Hearing Officer that he was making a statement of belief but was not prepared to offer any evidence to support his contention. His representative in fact pursued this issue when questioning the Carrier's witness and elicited no evidence of disparate treatment.

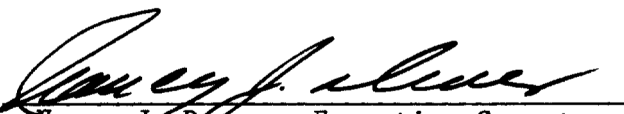
The Board finds that there is substantive evidence that Claimant was guilty as charged and that he received a fair and impartial Hearing. We therefore find no basis for disturbing the Carrier's disposition of this matter.

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 March 1992.