

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12581
Docket No. 11995
93-2-90-2-103

The Second Division consisted of the regular members and in addition Referee Robert O. Harris 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 & North Western Transportation Company violated the current agreement effective December 1, 1985, specifically Rule 28(a) when Carrier Officer failed to timely deny the claim of Electrician Michael J. Murphy within 60 days and failed to allow the claim as presented.
2. That the Chicago & North Western Transportation Company violated the current agreement effective December 1, 1985, specifically Rule #26 when they suspended Electrician Michael J. Murphy, after a hearing that was neither fair nor impartial.
3. That the Chicago & North Western Transportation Company remove the discipline from Mr. Murphy's record and make him whole for all wages and benefits lost, because 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 employe or employes involved in this dispute are respectively carrier and employe 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 assigned as an electrician at the Oelwein, IA, System Shop. He was absent or tardy for work on 15 dates during a twelve month period and was directed to appear for an investigation on the following charge:

"Your responsibility for excessive absenteeism and/or tardiness as set forth in the Equipment Management Absenteeism policy, when you were absent from you assignment on 12-3-87, 1-12-88, 3-17-88, 3-23-88, 4-8-88, 5-4-88, 5-9-88, 5-13-88, 6-17-88, 6-20-88, 8-12-88, 9-30-88, 10-5-88, 11-1-88, and 11-14-88 while you were employed as an electrician at the Oelwein System Shop."

Following a hearing, Claimant was notified that he was assessed a suspension of five days in accordance with the Carrier's disciplinary policy.

The Carrier Discipline System states that it will be utilized for, among other reasons,

"frequent or continued minor offenses committed by an employee who has demonstrated an unwillingness to change, and who, thereafter, has received a formal written warning of possible future discipline. Discipline for violation of the rules, instructions or regulations will be effected by one of the following methods:

- (a) Actual suspension from service for five calendar days. If the employee has a history of frequent and continued minor offenses and has previously received a formal written warning that he will, thereafter, be subject to the Discipline system, this method of discipline will be used the first time the employee is found guilty of a minor offense after receiving the formal warning."

Claimant had been given a warning in writing and counselling prior to the present charges being brought. At the hearing he admitted to the absences or tardiness; however, he indicated that several of the instances were the result of the serious illness and

subsequent death of his mother, the illness of his father and his court appearances because of his divorce. Claimant testified that he had been told that the absences caused by family illness would be disregarded. The supervisor who was alleged to have made that statement denied making it; however, even if it was said and all of the absences caused by the illnesses were excluded, Claimant had ten other instances of lateness, usually oversleeping. The Company's Absentee Policy indicates that formal discipline may be invoked if there are seven occurrences in a twelve month period.

The Organization claims that proper notice was not given of the denial of Claimant's demand that the suspension not be enforced and the record of it be removed from his file because the denial was sent to the wrong address for the General Chairman of the Organization. The Carrier maintains that the address used was the one which was listed in the Motive Power office for the General Chairman. The Organization did not refute this contention and accordingly the claimed lack of timely notice has not been proven.

The Organization further contends that the hearing was neither fair nor impartial because the individual who acted as the hearing officer was a potential witness regarding a statement he allegedly made to Claimant that his time off work prior to February would not be held against him. While it is clear that it would have been better practice to have a different individual as the hearing officer there was no prejudicial error. Even if Claimant's testimony regarding that statement is accepted as factually correct, his absences after February were far in excess of the allowable number. Nothing which occurred during the hearing indicated that Claimant did not receive a fair hearing.

Based on the evidence in this case it is our conclusion the Claimant was guilty of the charge and that the discipline assessed was warranted. The discipline was not unjust and the actions of the Carrier were not arbitrary.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 15th day of September 1993.