

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12745
Docket No. 12661
94-2-93-2-66

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the Employees:

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, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Proviso diesel shop Machinist employee K. H. Jones (hereinafter referred to as the "Claimant") from service for a period of ten (10) days.
2. That accordingly the Carrier compensate Machinist K.H. Jones for all wages lost while suspended, additionally, credit Machinist Jones 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 employee 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 were given due notice of appearance at hearing thereon.

At the time of the incident precipitating this dispute, Claimant held the position of Mechanic-in-Charge (M.I.C) at Carrier's Proviso Classification Yards located in Northlake, Illinois. His tour of duty was 5:00 P.M. to 1:00 A.M. On November 18, 1991, Claimant was notified to report for an Investigation concerning:

"[his] responsibility when [he was] observed sleeping while on duty on November 16, 1991, at approximately 11:00 p.m. on the west side of the Diesel Shop."

Following the Investigation, Claimant was assessed ten days actual suspension. That discipline was appealed by the Organization and processed in the usual manner, up to and including the highest Carrier officer authorized to handle such matters. Following conference on the property, the matter remained unresolved.

At the outset, the Organization has protested the multiple roles served by the Hearing Officer in this case (issuing the Notice of Investigation, conducting the Hearing, and assessing the Penalty). It alleges that Claimant did not receive a "fair and impartial hearing" since the Hearing Officer had already decided Claimant's guilt, and had a vested interest in confirming that prejudgment through his conduct of the Hearing. While it is not uncommon for Carrier Officers to serve more than one role in the process of disciplining an employee, when they choose to do so, they must take particular care that they maintain the integrity of the process. A careful review of the record before this Board does not support the Organization's allegations. There is no evidence to suggest that the multiple roles served by Carrier's Officer in this case in any way compromised the integrity of the process.

With respect to the substantive issue in this case, three Carrier Officers testified to seeing Claimant in a sleeping position in his truck. Although Claimant's version of the evening's event contradicts Carrier's witnesses, the fact that they were sequestered prior to testifying at the Hearing lends additional credibility to their narration of the night's events. In light of Claimant's prior discipline for the same violation seven months prior to the present incident, Carrier's assessment of ten (10) days' actual suspension is not excessive.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of September 1994.