

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13019
Docket No. 12921
96-2-94-2-66

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Chicago & North Western Transportation
(Company

STATEMENT OF CLAIM:

- "1. That the Chicago and North Western Transportation Company violated the current Agreement, effective December 1, 1985, in particular Rule 26(a) and (h), when they wrongfully assessed Electrician Peter Stanko a five (5) day 'actual suspension' and placed record of same in his personal file, after an investigation held June 16, 1993.
2. That the Chicago and North Western Transportation Company be ordered to remove the five (5) day 'actual suspension' issued June 24, 1993, the same be completely removed from Peter Stanko' service record, and any reference thereto in the C&NW Discipline System and that he be compensated for all time lost, including time spent at the investigation."

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 waived right of appearance at hearing thereon.

Claimant was charged with sleeping while on duty, and after a timely-held Investigation, was assessed a 5 day suspension from service.

After a thorough review of the Investigation transcript and the on-property handling of this dispute, it is the opinion of this Board that the discipline assessed will not be disturbed.

Carrier's witness testified to the darkened half of one of four suburban cars; of Claimant stretched out in a prone position facing away from the back rests on the jump seats; of the waste container propped against the door in such a manner that when the door was opened the container would fall; and that even shining a light in Claimant's face and the noise of the falling container did not cause Claimant to stir.

Claimant, of course, in his own defense, ably conducted with the assistance of his Representative, attempted to create a scenario of tension between the Carrier witness and Claimant that would perhaps undermine his credibility, but this effect is not persuasive. Likewise, the defense's story of waste containers placed in the aisle by conductors or others who work on the coaches was just as unpersuasive.

The Organization also attempted to raise procedural arguments that would convince this Board that the discipline should be overturned. The most serious argument is that of the multiple role of the Assistant Vice President-Commuter Operations who signed the notice of charges, who signed the discipline letter and who was the first appeal officer.

This is an argument raised multiple times by this Organization on this property and has been denied multiple times. When the Organization first raised the argument, Carrier responded by saying:

"The fact that the charges were issued by the AVP-Commuter Operations and that the discipline was administered by him and that he was the first level of appeal does not in any manner produce a procedural error. This has been the system in place on this Carrier for decades. Further, this system has been upheld by numerous board awards as not prejudicing the claimant's rights to a fair appeal process...."

See Awards 60, 29, 6 of Public Law Board No. 3166; and Award 42 of Public Law Board No. 2512, each involving the same parties as in the instant dispute.

Form 1
Page 3

Award No. 13019
Docket No. 12921
96-2-94-2-66

AWARD

Claim denied.

ORDER

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 21st day of August 1996.