

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13073
Docket No. 12889
96-2-94-2-32

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division,
(Transportation Communications International
(Union, AFL-CIO, CLC
(Springfield Terminal Railway Company
(Boston & Maine Division)

STATEMENT OF CLAIM: "Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company (hereinafter referred to as the Carrier) violated the rights of Mr. Donald Wandler (hereinafter referred to as Claimant), when it unjustly suspended Claimant from active service and assessed a five (5) day actual suspension as a result of investigation held on January 21, 1993.
2. That accordingly, the Carrier be ordered to compensate the Claimant for all loss of wages during the time he was withheld from Service; and the discipline be expunged from the Claimant's personal record and that he be made whole for any other benefits he would have earned during his suspension."

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 hearing thereon.

As a result of an Investigation held on January 21, 1993, the Claimant was notified on February 1, 1993, that he was being assessed a five day suspension for failing to follow his supervisor's instructions concerning a route assignment on December 30, 1992, which resulted in unnecessary expense to the Carrier. At the time, Claimant had five years of service as a Carman at Carrier's Lowell, Massachusetts, repair facility.

After a complete review of the record, the Board finds that there is substantial evidence to support the Carrier's charge that Claimant failed to follow the designated route assignment given to him orally by his supervisor on the evening of December 29, 1992. At the Investigation, Claimant admitted that it was likely that he was mistaken with respect to the order in which he was told to make his pick ups and deliveries, and he understood that his supervisor intended him to follow the order in which the assignment was given. There is **no** evidence to support a contention that Claimant was not given a fair and impartial hearing. Based upon Claimant's extensive disciplinary record amounting to a total of 78 days suspension over the prior 2 ¼ year period, this Board does not believe the penalty to be excessive and can find no reason to substitute its judgment for that of the Carrier.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.