

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13083
Docket No. 12967
96-2-94-2-115

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Southern Pacific Transportation Company
((Denver & Rio Grande Western Railroad
(Company)

STATEMENT OF CLAIM:

- "1. That the Southern Pacific Transportation Company (Denver & Rio Grande Western Railroad Company) violated the controlling agreement, in particularly Rule 32, but not limited thereto, when they unreasonably, unjustly and arbitrarily assessed a fifteen (15) day suspension, to Electrician S. A. McClain beginning January 17, 1994 thru February 4, 1994, following investigation held on January 5, 1994.
2. Accordingly, the Southern Pacific Transportation Company (Denver & Rio Grande Western Railroad Company) be ordered to compensate Electrician McClain as follows:
 - (a) Compensate him for all lost wages, at the prevailing rate of pay of electricians and all applicable overtime;
 - (b) Make him whole for all vacation rights;
 - (c) Make him whole for all health and welfare and insurance benefits;
 - (d) Make him whole for all pension benefits including Railroad Retirement and Unemployment Insurance;
 - (e) Make him whole for any and all other benefits that he would have earned during the time withheld from service;
 - (f) Any record of this arbitrarily and unjust disciplinary action 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 hearing thereon.

Claimant is regularly assigned at Carrier's Burnham Shops in Denver, Colorado. On November 15, 1993, at the beginning of his 11:00 p.m. to 7:00 a.m. shift, Claimant was told that he was being "loaned" to a Probationary Supervisor to assist with disconnecting traction motors, since there was no crane available for Claimant to perform his regularly assigned work. Claimant subsequently punched out at approximately 11:10 p.m. and informed his General Foreman that he had a personality conflict with the Probationary Supervisor. Despite the General Foreman's warning of the consequences, Claimant left the property.

By letter of November 29, 1993, Claimant was notified to appear for an investigation concerning his "alleged refusal to perform work assignment and being quarrelsome with [his] general foreman and for leaving the property without authorization." After several postponements, a hearing was held on January 5, 1994. Following the hearing, Claimant was notified that he was assessed a fifteen day actual suspension. The Organization protested the discipline on behalf of Claimant, and the claim was subsequently progressed in the usual manner.

The Organization has raised several procedural issues regarding the fairness of the investigatory hearing. This Board has carefully reviewed the record before it, and finds no basis upon which to find that Claimant received anything but a fair hearing.

With respect to the merits of the claim, the evidence on this record clearly shows that Claimant did refuse to work with the Probationary Supervisor and left Carrier's property shortly after he had reported to work, without obtaining proper permission to do so. In light of his behavior, Carrier's assessment of discipline was neither arbitrary nor excessive. Accordingly, the claim is denied.

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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 9th day of December 1996.