

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13197

Docket No. 13125

98-2-96-2-28

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

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Montana Rail Link, Inc., violated the terms of Article 13; and in particular paragraph ‘F’, when they arbitrarily dismissed Carman Richard R. Martin from their service effective June 5, 1995.
2. That accordingly: the Montana Rail Link, Inc. be ordered to compensate Carman Richard Martin in the amount of eight (8) hours pay at the regular rate of pay commencing June 5, 1995 and continuing until he is returned back to active service, all overtime pay that he may have lost during his absence, all benefits, and Insurance that he lost, including lump sum payments, bonuses, profit sharing loss, or any other benefit that an active employee may enjoy, all loss Flex Time, Railroad Retirement, and Unemployment Insurance he may also lose during his absence from the Company. We also claim that the removal of all mention of discipline be removed 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.

By letter dated April 25, 1995 Claimant, a Carman with the Carrier since 1987, was instructed to attend a fact finding session to ascertain the facts regarding his absenting himself from work 25 minutes early on April 19, 1995 without authorization and falsifying his time card for that date. As a result of an Investigation held on May 17, 1995 Claimant was charged with these infractions in violation of Rules 524 and 525 and was dismissed from service based, in part, on his prior record.

A review of the transcript of the Investigation reveals that Claimant was working his regular position of car inspector in the Laurel, Montana train yard on April 19, 1995. His shift was 7:00 A.M. to 3:00 P.M. from Saturday through Wednesday. Claimant was observed by his Foreman leaving the property at approximately 2:35 P.M. on April 19, 1995. Although all of the work on the shift was done for the day, the rest of the crew remained until 3:00 P.M. Claimant admitted leaving early and submitting a time card for a full eight hours for April 19, 1995 during a conversation with his Foreman on his next work day as well as during his testimony at the Investigation.

Carrier argues that Claimant's conduct amounts to abandoning his work assignment without permission and theft, both serious offenses meriting dismissal. The Organization contends that leaving early when work was complete had been a past practice with this Carrier for which Claimant should not have been disciplined, it was inappropriate to utilize a private conversation between Claimant and his Foreman against him at the Investigation, and Carrier improperly relied upon Claimant's prior record in meting out discipline. The Organization notes that Claimant was honest about his conduct throughout, and that leniency should be granted, citing Second Division Award 7575.

A careful review of the record in this case convinces the Board that there is substantial evidence supporting both the charges against Claimant as well as the penalty

imposed. The Organization has failed to sustain its burden of proving the existence of a past practice, as alleged, or the impropriety of Carrier relying upon Claimant's prior record in assessing appropriate discipline. That record establishes that Claimant had previously received 1, 10 and 20 days off without pay for failing to protect his assignment. We find no valid basis in this case for attempting to substitute our judgment for the disciplinary action taken by Carrier.

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 11th day of February 1998.