

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13267
Docket No. 13115
98-2-96-2-16

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

(National Conference of Firemen and Oilers
(System Council No. 6

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

- "1. That under the current and controlling agreement, Firemen and Oiler T. P. Reusch, ID# 188927 was unjustly dismissed from service on January 7, 1995 through February 7, 1995.
2. That accordingly, Firemen and Oiler T. P. Reusch be made whole for all lost time, with seniority rights unimpaired, the payment of 10% interest rate added thereto and his personal record be expunged of any reference to this discipline."

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.

On January 7, 1995 Claimant was informed by the Carrier of the following:

"You are charged with failure to protect your regular assignment January 6, 1994 (sic). You failed to report to work at 1500 hours at the Queensgate Service Facility.

You are being held out of service pending investigation.

Arrange to attend formal investigation at 0900 hours January 20, 1994(sic), in the conference room 2nd floor of the Locomotive Shop, Cincinnati, Ohio."

As a result of the Investigation the Claimant was assessed a 30-day suspension. The discipline letter of February 6, 1995 reads:

"As a result of your investigation and review of transcript January 20, 1995. It was determined that you failed to protect your regular work assignment as charged.

The discipline assessed you is to be a suspension for (30) calendar day's (sic), equal to time held out of service since the charge on January 7, 1995.

You are to report to work February 7, 1995."

The Organization argues that the Claimant was improperly removed from service pending the Investigation in violation of Rule 34, which reads:

"Section 1.

Except as set forth in Sections 3 and 4 below, no employee will be disciplined by suspension or dismissal without a fair and impartial hearing before a designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed in violation of this rule."

The Carrier argues it has the right to delineate what is a proper case to suspend an employee pending an Investigation.

Numerous tribunals have held that proper cases must be severe in nature; such as gross insubordination, criminal activity, violation of Rule G or instances where the safety of the employee or fellow employees is in danger. None of these reasons fits this case, nor has the Carrier shown where similar suspensions have been upheld in the past.

However, the fact that Claimant was improperly suspended does not mitigate the offense the Claimant was charged with doing. The record of the Investigation clearly supports the charge that the Claimant was guilty of being absent without authority on January 6, 1995 and that the suspension was warranted.

Therefore, the Board finds the record of discipline will remain on the record. However, because the Claimant was improperly withheld from service in violation of Rule 34, the Carrier is ordered to reimburse the Claimant for all time lost from the day held out of service through the day the discipline was issued. The Organization's claim for interest has no Agreement basis and is denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 18th day of May 1998.