

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13297
Docket No. 13239
98-2-97-2-5

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

(International Brotherhood of Electrical Workers
(System Council No. 16

PARTIES TO DISPUTE: (

(Soo Line Railroad Company

STATEMENT OF CLAIM:

- "1. That in violation of the controlling Agreement, in particular Rule 32, Shoreham Diesel Shop Electrician Oscar Miller was unjustly suspended from the service of the CP/Soo Line Railroad Company for ten (10) days.
2. That the investigation conducted on December 12, 1995 was not the fair and impartial hearing required by the terms of the controlling Agreement.
3. That Set-up Electrician Oscar Miller be made whole for all losses, as provided in Rule 32 of the controlling Agreement, which were incurred during the ten (10) day suspension, including all reference to the subject assessment of discipline to be removed from this 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 was suspended from the service of the Carrier for ten days as a result of a formal Investigation held on December 12, 1995. Claimant was found to have violated Rule 19 which reads:

- "1. In case an employee is unavoidably kept from work on account of sickness or emergency, he must notify his Foreman as early as possible.
2. Permission to be absent from work for other cases must be obtained from Foreman."

The Organization claims that the Hearing was not fair and impartial. Its point is well taken. The Carrier had only one witness to testify, its Foreman. The Foreman testified that the Claimant had called in about being absent. However, the Foreman did not know what dates, nor did the testimony reveal what was said on the calls. Information was developed that another Foreman had accepted phone calls from the Claimant but the Carrier did not have that Foreman testify. Finally, the Carrier Hearing Officer never questioned the Claimant at the Hearing as to the charges.

The Awards are numerous that the Carrier is required to give an employee a fair and impartial Hearing before assessing discipline. The Carrier did not do so in this case. While it is apparent the Claimant has an absenteeism problem, this Board cannot support the Carrier's actions in this case because of the lack of a fair and impartial Hearing.

AWARD

Claim sustained.

Form 1
Page 3

Award No. 13297
Docket No. 13239
98-2-97-2-5

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 15th day of June 1998.