

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13896
Docket No. 13782
06-2-05-2-36

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

**(Brotherhood of Railway Carmen Division of the
Transportation Communications International
Union, AFL-CIO**
PARTIES TO DISPUTE: (
(The Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13 when they assessed Carman Charles Philbrick with a five (5) working day suspension as a result of an investigation held on November 17, 2004.
2. That accordingly the Springfield Terminal Railway Company be required to compensate Carman Charles Philbrick in the amount of five (5) days pay. This is the amount he would have earned had the Carrier not violated our Agreement.”

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.

The Carrier by letter dated December 17, 2004 gave the Claimant, C. Philbrick, a five (5) day suspension for not reporting to work.

The Organization argued that the Carrier violated Rule 13 of the current Agreement since the Claimant was disciplined for failure to work overtime. There were extenuating circumstances that showed that the Claimant was right in not working the day in question. The Carrier arbitrarily decided that those who worked on Saturday would have Sunday as a rest day, however, the rule states that, if not enough employees are supplied, then work is assigned in inverse seniority order. The Claimant notified the Carrier on Friday, August 6, 2004 that he could not work because of personal business and that he had secured another Carman to work in his place. The Organization stated that the Supervisor has a selective memory. Employees who worked on Saturday should have been considered for the Sunday work. There was no emergency work to force overtime. Therefore, the discipline was not warranted and should be rescinded.

The Carrier argued that the Claimant was instructed to report to work on Sunday, August 8, on Friday, August 6. No junior employee was available. On Saturday, August 7, the Claimant informed the Carrier that he was not going to work on Sunday, and he was again ordered to perform the work. The Claimant then stated he would be booking off for personal reasons. The Claimant stated that he had arranged for somebody else to cover the work, but that was not appropriate because the employee scheduled to work on Sunday was required to work on the wrecker. The Claimant never offered any details as to what his personal business was and, therefore, the discipline was appropriate.

Upon review of all of the evidence presented, the Claimant was given a lawful and reasonable order. The basic concept in industrial law is to obey now and grieve later. There was no showing by the Claimant as to what this personal business involved. Therefore, what we have is a refusal to work. Just a general statement of "personal business" does not allow the Claimant to decide when he will perform required duties. Therefore, the claim will be denied.

Form 1
Page 3

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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 25th day of April 2006.