

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13922
Docket No. 13811
07-2-06-2-20

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

- “1. That the Union Pacific Railroad Company erred and violated the contractual rights of Alice Jaeger when Larry E. Hayes, Senior Manager, Telecom Construction, charged her with an alleged violation of Rule 1.13 and assessed her with a Level II under Carrier’s unilateral “Upgrade Policy” in a letter dated July 18, 2005.
2. That, the transcript of investigation absolves Claimant of any violation of any rule, particularly Rule 1.13, and therefore the Level II Assessment should be expunged from her 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.

On June 17, 2005, Carrier notified Claimant to appear for a formal Investigation on June 29, 2005. The Investigation was postponed and subsequently held on June 30, 2005, to develop all the facts as to whether or not Claimant failed to show up for work on June 15, 2005, or follow the rules of reporting if absent or late.

On July 18, 2005, Claimant was notified that she had been found guilty of violation of Rule 1.13, Reporting and Complying with Instructions. Claimant was assessed a Level 2 Letter of Reprimand. The charge of alleged violation of Rule 1.15, Duty-Reporting or Absence, was dismissed as not being relevant.

It is the position of the Organization that Claimant was not in violation of Rule 1.13 because she notified proper authority as soon as possible that she had overslept and would not be reporting for work on June 15, 2005 and requested the remainder of the day off as a vacation which was approved.

The Carrier argues that Claimant failed to comply with established procedures for notifying her Supervisor that she would be absent from service and the measure of discipline assessed was appropriate.

The facts are Claimant was employed as Telecommunications Technician in the Carrier's Council Bluffs Telecom Repair Facility. The hours of her assignment are 8:00 A.M. to 4:30 P.M. On June 15, 2005, at 10:47 A.M., the Claimant called Steve Yeoman, Shop Technician, (who was not her team leader) and told him she had overslept and she would be in at noon and would take a half-a-day vacation. Yeoman testified that he did not approve Claimant's vacation request because he did not have the authority to do so, therefore, he directed Claimant to contact the Manager, Mr. T. L. Heinrichs. Claimant instead called Ms. D. Mercer who works at the front desk. Subsequently, Mercer convinced the Claimant to discuss the matter with the Manager. Mercer then transferred the call to Heinrich after which it was agreed that Claimant would take the remainder of the day off and use it as vacation.

The Carrier was correct to have dismissed the charge alleging violation of Rule 1.15 because the record substantiates that the Manager approved the Claimant's absence. The approval of the absence, however, does not negate the fact that Claimant violated Rule 1.13 which required her to notify a specifically designated Supervisor in a timely manner that she would not be protecting her scheduled assignment. The Carrier met its burden of proof that Claimant did not comply with directives for requesting time off.

The only issue remaining is whether the discipline was appropriate. This was Claimant's second violation of Rule 1.13 for failing to follow directions regarding attendance in less than 14 months. Claimant was assessed a Level 2 discipline in accordance with the Carrier's UPGRADE Policy, which entailed a Letter of Reprimand and a one-day alternative assignment with pay to develop a corrective action plan. The Board finds and holds that the discipline was appropriate because it was not arbitrary, excessive or capricious, but instead was corrective in nature. The discipline will not be set aside.

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 6th day of August 2007.