

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14182
Docket No. 14049
17-2-NRAB-00002-150014**

The Second Division consisted of the regular members and in addition Referee Lynette A. Ross when award was rendered.

**(International Association of Machinists and Aerospace
(Workers**

PARTIES TO DISPUTE: (

(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- “(1) Norfolk Southern Corporation arbitrarily and capriciously assessed Machinist S. H. Vinsack to Ten (10) day suspension following a formal investigation (trial) held on October 20, 2014.**
- (2) Accordingly, Machinist S. H. Vinsack, should have his record cleared of any reference to the charges, as if the unjust discipline had not been imposed, be credited for any and all fringe benefits that would have accrued and be paid all time lost, including overtime; made whole.”**

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 Claimant, who was hired on February 22, 2005, held seniority as a machinist at the Carrier's Charlotte Roadway Shop, in Charlotte, North Carolina. By September 30, 2014 letter, the Carrier directed him to attend a formal investigation in connection with the following alleged offense:

"Your conduct unbecoming in connection with your marking off under false pretenses and failure to protect your assignment in that you were absent from your assignment on Monday, September 15, 2014, after advising your supervisor that you were sick, when county records show that you were arrested and booked into jail on Monday, September 15, 2014."

Following the once-postponed investigation, held on October 20, 2014, the Claimant was advised by letter, dated November 5, 2014, that based on the testimony contained in the transcript and the evidence presented at the investigation he was found guilty as charged. The Claimant was assessed discipline of a 10-day actual suspension, commencing on November 10, 2014.

The Organization contends that the discipline assessed was unfounded and unwarranted. The record established that the Claimant reported off sick on September 15, 2014, at 1:45 p.m., in accordance with Rule 26 of the Schedule Agreement. The Carrier distorted the facts and presented a case on sheer conjecture and false information from the newspaper and Internet regarding the Claimant's pending court case. During the investigation, the Claimant submitted official court documents substantiating that the Claimant was officially processed and released on Saturday, September 13, 2014, not Monday, September 15, 2014. Therefore, the Carrier has not met its burden of proof establishing the Claimant's guilt of the charge, and the Board should sustain the instant claim in its entirety.

The Carrier asserts that the testimony developed during the formal investigation indisputably established that the Claimant marked off under false pretenses and failed to protect his assignment on Monday, September 15, 2014. In support of its position the Carrier relied on booking information obtained from the Gaston County Sheriff's Office showing that the Claimant was actually booked for a vehicular hit and run at 5:19 P.M., on September 15, 2014, the date he claimed he was too sick to work. The Carrier relies on an Inmate Summary document showing the Claimant was released from the Gaston County Sheriff's Office at 5:35 P.M., on September 15, 2014. The Carrier submits that the discipline assessed was warranted

given the testimony and factual record as compiled during the investigation, and that the discipline of a 10-day actual suspension should not be disturbed by this Board.

The Board has carefully reviewed the investigation transcript and all of the documents submitted by the parties during their on-property handling of this matter. Initially, we note that this claim is procedurally sound in all respects. The claim was properly handled by the parties at all levels of appeal pursuant to the terms of the governing Schedule Agreement. Thus, it is properly before the Board for final and binding adjudication on the merits.

Upon our due study of the record with regard to the merits, Board finds that the Carrier's burden of proof was not met in this case. The Board recognizes there is competing documentation that goes to the heart of the charge at hand. There is no dispute that the Claimant marked off for reason of sickness prior to his tour of duty on September 15, 2014. However, we find that the Carrier failed to sufficiently credit the Claimant's documentation from the State of North Carolina, Gaston for Mecklenburg County, substantiating his testimony that he had made no court appearance on Monday, September 15, 2014. According to the Claimant, he appeared before the Gaston County Sheriff's Office on Saturday, September 13, 2014, however, such appearance was not recorded on paperwork until Monday, September 15, 2014.

The Board finds that the Conditions of Release and Release Order as prepared by the State of North Carolina, Gaston for Mecklenburg County, documents the Claimant's appearance before Magistrate Thomas N. Brown, on Saturday, September 13, 2014, before the Magistrate, and his court date of November 3, 2014, at the Mecklenburg County Courthouse. From the record, we find that the Claimant's testimony was consistent with the content of that document, while the testimony by the Carrier's witness was confusing and equivocal.

Furthermore, the record establishes that the Claimant was not "arrested and booked into jail," as the investigation notice so asserted, thus giving credence to the Organization's position that the Carrier's approach to this matter was prosecutorial rather than fact-finding. The Claimant's supervisor testified that the Claimant called in sick on Monday, September 15, 2014, prior to the start of his shift, and that the supervisor had no reason to doubt the Claimant's integrity. The record is devoid of any evidence establishing that the Carrier requested medical documentation, such as a doctor's note, to substantiate the Claimant's mark-off for

reason of illness. From this record, the Board concurs that the evidence shows that the Claimant reported off in accordance with Rule 26, which reads, in pertinent part:

“In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.”

Therefore, based on the above considerations, the Board rules that the charge alleging the Claimant’s conduct unbecoming by marking off under false pretenses and failure to protect his assignment on Monday, September 15, 2014, was not proven by substantial evidence. Accordingly, the Carrier shall expunge the disciplinary notation from the Claimant’s record, and shall make the Claimant whole in accordance with the provisions of the governing Schedule Agreement.

AWARD

Claim sustained.

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 21st day of February 2017.