Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7346
Docket No. 7215
2-C&NW-MA-'77

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That Machinist Fred J. Sigglekov was unjustly suspended from service February 16 through February 21, 1975, pending investigation. That, following investigation, he was unjustly assessed ten (10) days deferred suspension.

2. That Machinist Sigglekov be paid for each day's work lost February 16th through February 21st, 1975, (six days), eight (8) hours per day at the applicable rate of pay for Machinists, that his record be cleared of the ten (10) days deferred suspension, and that he be given credit vacation eligibility for the time unjustly held out of service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant entered service of Carrier on January 19, 1972 as a Laborer. On February 16, 1972 Claimant was promoted to Machinist Helper, which position he held as of February 15, 1975. Claimant's work post is Carrier's locomotive repair shop at Oelwein, Iowa.

On February 14, 1975, Claimant was notified by Carrier that he would be required to work overtime on Saturday, February 15, 1975, since Carrier had to remove eight (8) diesel locomotives from storage and prepare them for service by February 17, 1975.

Claimant subsequently notified Carrier between 1:00 AM and 2:00 AM on the morning of February 15 that he was sick, and would not be at work that day. Claimant then missed both his overtime assignment and his regular shift on Saturday, February 15.

When Claimant reported for work on his regular shift on Sunday, February 16, he presented a note from a local physician in Oelwein by the name of Dr. H. S. Jaggard. The doctor's note raised some question in Carrier's mind about the genuineness of Claimant's alleged illness. Therefore, Carrier attempted to contact Dr. Jaggard, but was unsuccessful. At that point, approximately 3:00 PM, Claimant was taken out of service pending investigation.

On February 19, 1975, Claimant was notified by Carrier to appear for a formal investigation on Friday, February 21, 1975, as he was being charged with "Your responsibility for your failure to properly protect a specific work assignment in that you did not appear for overtime duty at the Oelwein Shop on Saturday, February 15, 1975, at 7:00 AM as you were clearly instructed to do."

As a result of the investigation, Claimant was notified on March 4, 1975 that he was being assessed a 10-day deferred suspension, effective March 1, 1975. Claimant had also been held out of service without pay from February 16, 1975 through February 21, 1975.

A review of the entire record in the instant case convinces us that none of Claimant's substantive rights were violated in the hearing on February 21, 1975.

Moreover, there does seem to be substantial evidence of probative value that Claimant was guilty of failing to properly protect his assignment on February 15, 1975.

However, while recognizing Carrier's legitimate concern with getting employees to work necessary overtime assignments, nevertheless, we find that under all the circumstances of the instant case, that Claimant's offense does not constitute an "extreme case" under Rule 35, justifying "suspension pending a hearing."

Therefore we direct that Claimant be paid at the applicable rate of pay for each day of work lost from February 16 through February 21, 1975.

A W A R D

Part 1 of claim upheld in part per findings.

Part 2 of claim upheld in part per findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of September, 1977.