

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees' Department, A. F. of L. - C. I. O. (Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Cleaner Elijah Gates was unjustly assessed thirty (30) days suspension on May 20, 1977.
2. Coach Cleaner Elijah Gates was erroneously charged with failure to protect his assignment on April 20, 21, and 22, 1977.
3. That the Chicago and North Western Transportation Company be ordered to compensate Coach Cleaner Elijah Gates for the thirty (30) days he was unjustly suspended, and make him whole for any loss of benefits which are a condition of employment.

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 is a Coach Cleaner employed for approximately two years prior to this dispute. He received a thirty-day disciplinary suspension for being "absent without proper notification or permission" on April 20, 21, and 22, 1977, in violation of established rules governing attendance and notification of absence.

An investigative hearing developed the information that Claimant had reported off on April 19 because of a dentist's visit. The Carrier has no record of report-off calls by telephone on April 20-22, although Claimant alleges that calls were made on his behalf. Claimant alleged that he was under a doctor's care from April 11 through May 2, 1977, and apparently read from a medical note to this effect at the hearing. While invited to submit the note as evidence, both during and subsequent to the hearing, he

failed to do so. Testimony further shows that on April 11, he had reported off because he was "out of town", but no connection between this and his alleged illness was established at the hearing.

The Board finds no basis on which to question the Carrier's conclusion that the Claimant had failed to take the necessary steps to protect his assignment on the three days in question. The testimony as to illness and confinement at home was contradicted by the earlier excuses given for absence on April 11 and April 19.

The Organization argues that the Claimant did not receive a fair hearing as required by the Agreement. The Board does not agree. References to the previous absence record were not used to determine the Claimant's guilt for April 20-22. It is proper to make reference to the past record of an employee in determining the severity of a disciplinary penalty. In this instance, the record shows that the Claimant had received three letters of reprimand and a verbal reprimand, all as to absenteeism and tardiness and all within one year of the currently imposed 30-day suspension.

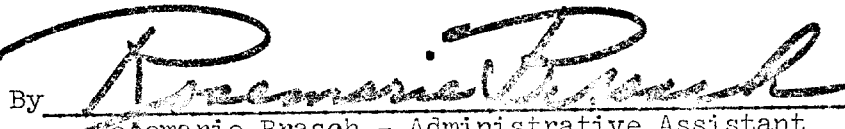
The Organization claims that the doctor's note, referred to above, was in the hearing record and should have been relied upon. To the contrary, the Claimant failed to submit it for the record.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of April, 1979.