

2-EJ&E-CM-'79

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

Parties to Dispute:

{ System Federation No. 6, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
  
{ Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That as a result of an investigation held on Wednesday, August 4, 1976 Carman Painter John Jenkins was suspended from the service of the Elgin, Joliet & Eastern Railway Company for a period of five (5) working days -- August 21 through August 25, 1976. Said suspension is unjust, unfair, unreasonable and in violation of the current working agreement specifically Rule 116 and 100 (old rules 22 and 35).
2. That the Elgin, Joliet & Eastern Railroad Company, hereinafter referred to as the Carrier, be ordered to compensate Carman Painter John Jenkins, hereinafter referred to as the Claimant, for eight (8) hours on each of the five days he was suspended, said compensation to be at the pro rata rate of pay.

### 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 was suspended from the service of the Carrier for 5 days after an investigation when he was found guilty of being absent from work on certain dates, reporting late on certain dates, sleeping while on duty and falsifying his time card.

The claimant first alleges that he did not get a fair hearing because the hearing officer acted in a multiplicity of rolls at the hearing in addition to performing a preliminary investigation. While we adhere to our position that the Carrier combines the judge, jury and prosecutor rolls in one person at its own peril, we do not find any prejudicial conduct in the instant case.

As to the specific charges, we find that with one exception, the finding of guilt is supported by substantive evidence of probative value. We do not believe that sufficient evidence was adduced to support the charge of falsifying the time card. The record is just too thin to support the Carrier's finding. The charges of being absent, late and sleeping on duty are grounded on evidence sufficient so as to keep this Board from disturbing the finding of the hearing officer.

We further find that the five day suspension was warranted as a penalty for the charges in which we concur in a finding of guilt.

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 24th day of May, 1979.