

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated Rule 39 of the schedule "A" agreement made between the Illinois Central Gulf Railroad and the International Association of Machinists - AFL-CIO, when they suspended machinist J. M. Bennett from service for a period of thirty (30) working days, starting October 15, 1978 through November 25, 1978 inclusive.
2. That accordingly the carrier be ordered to pay Mr. Bennett all wages lost in accordance with Rule 39, including all holiday and overtime; that he be made whole for benefit losses, if any; and that his record be cleared of any reference to the investigation and discipline rendered as result of the investigation conducted, held October 3, 1978 in accordance with Rule 39 as a result of his suspension from service beginning October 15, 1978 and through November 25, 1978 inclusive.

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, Machinist, J. M. Bennett, after investigation, was suspended without pay for thirty (30) working days from October 15, 1978 through November 25, 1978. Claimant was charged with (1) failing to perform his assigned duties, on September 20, 1978, and (2) failing to promptly report an on-duty injury to his foreman on September 19, 1978.

On the property the Organization contended that Carrier violated the Agreement when it suspended Claimant. The Organization further argued that Claimant did perform the duties conveyed to him and that he did not realize he was injured on the above date and for that reason, did not report the injury.

The Organization asked that Claimant be paid all wages lost in accordance with Rule 39, including all holiday and overtime; that he be made whole for benefit losses, if any; and that his record be cleared of any reference to the investigation and discipline rendered. It also asserted that the charges against Claimant were not precise.

Rule 39 in pertinent part states:

"No employee shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee will be apprised of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by the authorized committee. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from such suspension or dismissal."

Subsequent to the handling of this case on the property and the submission of the case to this Board, the Carrier wrote a letter requesting a withdrawal of claim dated February 12, 1981. This letter was accompanied by a copy of Claimant's resignation, and waiver of all rights and claims against the Carrier. This letter from Claimant, by its express terms, makes the claim moot. As such, we will dismiss the claim in its entirety.

A W A R D

Claim dismissed.

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 16th day of September, 1981.