

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That the National Railroad Passenger Corporation denied Electrician S. G. Jones the right to a fair and impartial investigation on January 18, 1980, subsequently unfairly and unjustly assessing him 15 days deferred suspension in Carrier's letters of January 28, 1980.
2. That, accordingly, the discipline assessed Electrician S. G. Jones be reversed in its entirety, all matters relative to this case be removed from Claimant's record and with no further reference ever made to this case in the future.

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, Mr. Samuel G. Jones, has been employed as an electrician by the Carrier since December 10, 1976. On December 28, 1979 Claimant was notified to appear for formal investigation on January 4, 1980. He was charged with violation of Carrier Rules of Conduct "K" and "L" on December 26, 1980. These Rules read as follows:

"K. Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

"L. Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority.

After request for postponement by Claimant the investigation was held on January 18, 1980. On January 28, 1980 Claimant was notified that he had been found in violation of these two Rules cited above as a consequence of his failure to meet Train No. 4 and perform his duties as electrician on December 26, 1979 and that he was thereby being assessed a fifteen (15) day deferred suspension. After

appeals on property in accordance with the controlling Agreement this case is now before the National Railroad Adjustment Board.

Organization's arguments in its submission to this Board center on procedural issues related to the fairness of the investigative hearing. Analysis of the record before this Board leads it to conclude that Rule 23 of the controlling Agreement (Discipline-Investigation-Appeal) was not contravened. While Rules "K" and "L" were not cited verbatim during the hearing nor in the original notice to Claimant of this hearing, Claimant did admit to having a copy of these Rules which it is assumed he consulted relative to the instant case; further, while Carrier did cite past record when assessing penalty, which the Board notes is a traditional prerogative of Carriers in the railroad industry, Carrier did this more as a exercise of form than substance since no previous detail of the prior work record on the part of the Claimant is cited.

The focus of the instant case, therefore, must be centered on the issue of merit. The record shows that Claimant's only responsibility on December 26, 1979, at the hour when Train No. 4 was to arrive, was to be available to perform repairs on this train if so instructed by the Relief Car Foreman. Instead Claimant was on Train No. 304, during the time No. 4 was in the station, and could not be found by the Relief Car Foreman. Both the Relief Car Foreman and Organization witness, electrician Livingston, stated in hearing that there was no reason to be on Train No. 304 unless there was work to be done. And the Car Foreman had not given such instructions. It appears to this Board, given the facts presented to it in this case that Claimant was, in fact, preoccupied with some repairs on Train No. 304 out of personal initiative while Train No. 4 was in station. While this Board does not condone infractions of Rules such as "K" and "L", which it has no other alternative but to determine to be such in the instant case, it nevertheless wishes to underline for the record that these rules were broken according to all appearances, as a result of personal initiative on the part of the Claimant rather than any desire or will to flaunt the importance of these Rules for the orderly and efficient functioning of the Carrier. The fact of the matter is, however, that a railroad cannot function in an orderly and efficient manner if the lines of authority do not remain established, and if the channels of communication underpinning this line of authority do not remain intact.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of March, 1983.