

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(The Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employees:

1. That the Duluth, Missabe and Iron Range (DM&IR) Railway Company unjustifiably suspended Mr. Keith Miernicki for 45 days as a result of the decision of the hearing officer on an investigation held on January 28, 1983.
2. Accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to repay Mr. Miernicki for the duration he was suspended and restore any benefits due him during his suspension.

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 employes 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.

Electrician Miernicki contends that he was unjustly suspended for 45 days for alleged timecard falsification.

On November 29, 1982 Claimant had called in but was late for work, arriving after his scheduled 7:00 a.m. starting time. He asserts that he arrived at the Electric Shop at 7:30 and, after going to the locker room, recalling that he had left personal items in his car, went to the parking lot to retrieve them. On his way back he met his immediate Supervisor. The Supervisor testified that he asked Miernicki, "Are you just now reporting for work?", that Claimant responded affirmatively and explained that he had overslept but had called in. Miernicki stated that he only told the Supervisor that he was late and had called in. He denies that he answered "yes" to the question of whether he was "just now reporting for work".

The Supervisor concluded that Claimant had in fact "just arrived" at that time -- 7:51 a.m. -- and while checking time cards that afternoon, found what he contended was a discrepancy between Claimant's actual and reported times of arrival.

The Carrier's case is based entirely upon the Supervisor's testimony that Claimant affirmatively answered his question of whether he was "just now" reporting for work at 7:51 a.m. This key question, however, was asked over the hood of a pickup, as Claimant passed in an area where motors were running. No effort was made to determine what item(s) Miernicki may have gone to his car to get. There was no evidence that Claimant was not at work at 7:30. The Supervisor was not in the facility at that time.

There was an initial hearing during which the principal Carrier witness relied upon a timecard apparently used November 22nd by Claimant. He insisted that the tardiness occurred on that date. The card actually at issue here, also dated November 22, 1982, shows an arrival time of 7:30. This timecard had been taken out of the rack by the Supervisor at 3:30 p.m. the 29th of November and correctly reflects that Claimant attended a safety meeting held that day.


Our review of the record discloses insufficient evidence that Claimant did not report to work at 7:30 November 29, 1982 or that he falsified his reporting time that day. Claimant is to be compensated for lost wages less any outside earnings during the period of the suspension. He should also be paid from 7:30 a.m. for the 29th of November, 1982.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.