

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10348
Docket No. 10256
2-SOU-MA-'85

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

(International Association of Machinists and
(and Aerospace Workers
Parties to Dispute: (
(Southern Railway Company

Dispute: Claim of Employee:

1. That the Southern Railway Company was arbitrary and capricious, when they unjustly suspended Machinist Nathaniel Oden, Atlanta, Georgia, seven (7) days beginning 10:45 AM January 19, 1982 through 3:00 PM January 25, 1982.

2. That accordingly, the Carrier be ordered to reimburse the aforesaid employee for all lost time beginning January 19, 1982 through January 25, 1982 with all rights unimpaired and his record cleared.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 were given due notice of hearing thereon.

Claimant, Nathaniel Oden, is a Machinist and has been employed by Carrier, Southern Railway Company, since October 3, 1974. The Claimant works at Carrier's Atlanta, Georgia, Diesel Shop.

On December 8, 1981, a preliminary investigation was held, charging the Claimant with "failure to perform your assigned duties in that you were away from Locomotive 2327, to which you were assigned, from 9:40 a.m. to 10:15 a.m. on December 8, 1981." At the conclusion of the investigation, Claimant was found guilty of the violation and received a seven-day suspension.

Claimant requested and received a formal investigation, which was finally held on January 5, 1982; the disciplinary suspension was held in abeyance pending the formal investigation. At the end of the formal investigation, the assessed discipline was affirmed and the Claimant was suspended from January 19 through January 25, 1982.

The Organization contends that the evidence presented at the hearing did not establish that the Claimant failed to perform his assigned duties. The Organization argues that the Claimant was away from Locomotive 2327 only for legitimate reasons, such as locating tools and parts. The Organization further argues that Claimant did perform his assigned tasks, i.e., to install blowers in a locomotive.

The Organization argues that the Carrier failed to meet its burden of proof, and the Carrier was arbitrary and capricious when it unjustly suspended the Claimant. The Organization further contends that the Claimant should be made whole for all wages lost during the suspension.

The Carrier contends that the evidence establishes that the Claimant was away from his assigned location from 9:40 a.m. to 10:15 a.m. on December 8, 1981. The Carrier argues that the Claimant's Foreman observed the Claimant and the Claimant's assigned work location for all but a few minutes of that time period, and testified that the Claimant did not return to his assigned location.

The Carrier argues that Claimant was absent for an extended period of time and has offered no plausible explanation for his absence. The Carrier rejects Claimant's explanation that he was searching for bolts and looking for studs primarily because neither task would have taken that much time. Moreover, Carrier points out that Claimant's Supervisor told him that if he had to leave for material, he should notify the Supervisor and this was not done.

Carrier further contends that during the investigation, the Claimant was afforded all rights to which he was entitled. The Carrier argues that the Claimant was proven guilty of failing to perform his duties, and the disciplinary suspension, therefore, was reasonable and justified. Carrier contends that the claim should be denied.

This Board has reviewed all of the evidence and arguments in the record; and it is convinced that the Claimant, Nathaniel Oden, was guilty of the rule violations with which he was charged. Although there is not enough evidence for this Board to determine if Claimant's reasons for being away from his work station were his personal electioneering, as argued by the Carrier, the fact remains that Claimant did leave his work assignment for a lengthy period of time and was observed during that extended time neither seeking equipment or parts nor working on the locomotive in compliance with his work assignment. This Board finds that the Claimant did have a work assignment and had no reasonable excuse for not working on it between 9:40 a.m. and 10:15 a.m. on December 8, 1981. Hence, Claimant violated Carrier's rules and was subject to discipline.

This Board also finds that it is fundamental that if there is substantial evidence to support the Carrier's finding, this Board will not substitute its judgment for that of the Carrier with respect to the type of discipline imposed unless the Carrier's action was arbitrary, capricious, or in bad faith. The record contains evidence that this Claimant had been previously suspended for failure to protect his assignment. Therefore, there is nothing improper about the imposition of a longer suspension for this next offense.

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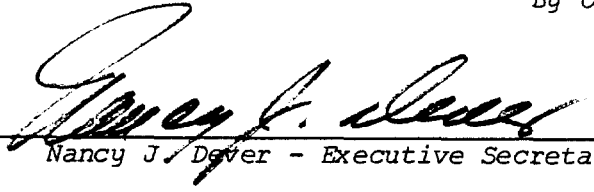
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 20th day of March 1985.