Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10356
Docket No. 10505
2-N&W-CM-'85

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Norfolk & Western Railway Company

Dispute: Claim of Employes:

1. That in violation of the current Agreement, Carman J. J. Kitchens was unjustly assessed a fifteen (15) day deferred suspension by the Norfolk & Western Railway Company following a hearing, held on May 20, 1982.

2. That accordingly, the Norfolk & Western Railway Company be ordered to:

a. rescind the fifteen (15) day deferred suspension assessed Carman J. J. Kitchens by letter dated July 15, 1982.

b. purge the personal file of Carman J. J. Kitchens of the formal investigation conducted May 20, 1982 and all letters pertaining thereto or insert a letter in Carman J. J. Kitchens' personal files absolving him of the charges brought forth in the notice letter dated January 12, 1982.

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.

Carman J. J. Kitchens received a fifteen day deferred suspension in July, 1982 for improper performance of duty in that he allegedly failed to notify proper authorities of a bad order car which he had inspected, and also because he allegedly furnished false information concerning that car by advising the General Foreman that the car bore a green home shop tag.

December 30th, Train 3SC01, leaving Decatur, was delayed when a Conductor saw a car with a bad order tag. The bad order car had been in the train during inspection and air test. The last person responsible to report a bad order on a train, if it had been overlooked by the switching crew, was Inspector Kitchens. The Inspector Foreman asked Carman Sadwick to look at the car and, if nothing was wrong with the running gear, to take the bad order cars off and let it proceed. In Sadwick's judgment, nothing was wrong with the running gear and he allowed it to proceed. After the train left, Kitchens told the Foreman that there had been another type of

card, green in color, on the car over the bad order tags. Kitchens stated that he had seen the bad order tag, knew the car was in the train, but had made no attempt to notify anyone about the bad order tags since there were green home shop tags over the bad orders, and that the car was going to home shop for disposition. When it arrived in Kansas City, it was stopped and a defective cushioning device repaired. While the car had been in Decatur car shop, the center sill was blocked immobilizing the cushioning device. The car was never properly released from the Decatur car shop, but put on the outbound cut in error. There would have been no reason to put home shop tags on it.

The evidence indicates that the home shop tags for the Norfolk and Western Railroad is white or vanilla colored, not green. The Foreman testified that he saw the car December 29th without any home shop tags on it. The bad order tags did not show anything had been stapled on top, according to the Inspector Foreman when he received them from Sadwick December 30th. No home shop tags were turned in or mentioned by Sadwick according to the record.

While the Organization asserts that the refusal to postpone the Hearing to allow them an opportunity to produce Sadwick as a witness was improper, there had been several postponements and there had not been any prior efforts by the Organization to contact Sadwick or have Sadwick come to the Hearing. The contention that Claimant was prejudiced because he was not permitted to question witnesses is without merit since he was represented and retained the right to question through that representative We find no procedural irregularities which justify setting aside the discipline.

Our review of the record convinces us that there is sufficient evidence to sustain a finding that Claimant failed to report the bad order car and falsely stated that the car carried a green home shop tag.

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 27th day of March 1985.