

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10760
Docket No. 10852
2-NRPC-MA-'86

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation (AMTRAK) be ordered to make whole Machinist G. N. Hummell for all losses as a result of a ten (10) day suspension in violation of Rule NO. 28, but not limited thereto, of the prevailing agreement dated September 1, 1977 as subsequently amended.

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 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 waived right of appearance at hearing thereon.

The Claimant, G. N. Hummell, a Machinist in service with the Carrier for approximately ten years, was given a 10 day suspension as a result of an investigation which took place on January 26, 1984. The Claimant was charged with violation of Rule I, specifically, failure to supply personal medical records in a timely fashion, which the Carrier alleged constituted insubordination.

The Organization argued the Claimant received a letter of instruction on December 22, 1983. The letter informed the Claimant he had 15 days to turn over his medical records, which means the Claimant's records should have been in the hands of the Carrier by January 6, 1984. The Organization admits the Carrier did not receive the records in question until January 10, 1984, but notes the Claimant had told his doctor to give the information to the Carrier shortly after the first of the year. The Organization stated this was during the holiday season. The Organization also argued the letter requesting the information did not notify the Claimant of the penalty of noncompliance as would normally be required in insubordination cases.

The Carrier argued that, based on the record, it is clear the Claimant did not comply with the reasonable instructions given to him by the Carrier. The materials requested were not received by the Carrier until 4 days after they were due, and the letters on Carrier letterhead constitute instructions, and failure to comply with them is insubordination. In addition, the Claimant had a poor work record. He called to determine whether the Carrier had in fact received the information only because he had been given the notice of investigation. Under the circumstances the Carrier argues that the discipline that was given was fair and proper.

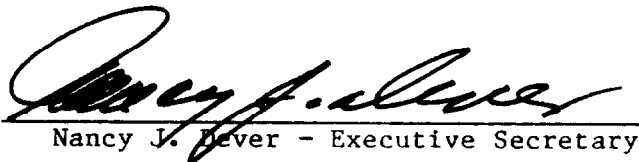
Upon complete review of the evidence, the Board finds that the Claimant was given a fair and impartial investigation. The question that remains is whether the Carrier proved that the Claimant was insubordinate. In order to comply with the instructions of the Carrier, the Claimant needs the cooperation of a third party, his personal physician. While the Claimant did wait several days before asking his physician to supply the requested information, it certainly was within a period of time that would have allowed the doctor to forward the information in a timely fashion. There is no question that the Carrier is entitled to this information, and there also is no question that the 15 day time period was reasonable under the circumstances. However, to hold a Claimant liable under the concept of insubordination for the activities of a neutral third party seems to this Board to be unreasonable given the circumstances. This is not a case where the Carrier did not receive the information it requested. It is a case where the information was somewhat delayed, not through the direct fault of the Claimant. The Board finds the Carrier has not proven the Claimant to be insubordinate in this case, and, therefore, the claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.