

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(Norfolk and Western Railway Company)

Dispute: Claim of Employees:

1. That, under the controlling agreement, Sheet Metal Worker, E. P. Michel was unjustly suspended from service on December 21, 1984 through April 19, 1985 resulting from an investigation that was held on December 7, 1984.

2. That, accordingly, the Carrier be ordered to pay the Claimant all wages lost as a result of said suspension and to include the following:

- (a) Make Claimant whole for all vacation rights.
- (b) Pay premium on all health and welfare benefits as paid while in the service including group life insurance.
- (c) Remove all charges brought against Claimant from his personal record.

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.

At the time of the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a Pipefitter at Carrier's Motive Power facilities, Bellevue, Ohio, and had about fifteen years of service. On November 28, 1984, he was notified:

"You are hereby notified to report to the conference

Room of the Locomotive Department at Bellevue, Ohio at 3:30 PM, December 7, 1984 for a formal investigation (hearing) to determine your responsibility in connection with your unauthorized use of Company time and material for the purpose of constructing:

Two Auto Jack Stands
Utensil Holder for outdoor cooking

for Laborer, P. G. Slack in that the above listed items were reportedly made by you while on duty and under pay as Pipefitter, Bellevue Locomotive Shop, Bellevue, Ohio using Company Material.

If you desire to have a representative or representatives and/or witnesses present at the formal investigation (hearing) please arrange for their presence."

The Investigation, or Hearing, was conducted as scheduled. A copy of the Transcript of the Investigation has been made a part of the record. Following the Investigation, or Hearing, Claimant was assessed discipline of one hundred twenty (120) days actual suspension, to be effective December 21, 1984, through and including April 20, 1985.

Claimant was present throughout the Investigation and was represented. The Transcript shows no exceptions by the Claimant or his Representative as to the manner in which the Investigation was conducted. It is well settled that if exceptions are to be taken as to the manner in which an Investigation is conducted, such exceptions must be taken during the course of the Investigation; otherwise, they are deemed waived. (Award 9972).

The Carrier objects that the Claim as submitted to the Board has been changed from the Claim as handled on the property and, therefore, must be dismissed by the Board on jurisdictional and procedural grounds. We reject such contention. While the wording of the Claim has been changed slightly, the substance of the Claim remains the same. The Carrier has not been misled.

In the Investigation conducted on December 7, 1984, substantial evidence, including a written statement from the Claimant, was introduced in support of the charge. A Carrier Special Agent introduced a statement willingly made to him by the Claimant on November 6, 1984, in which Claimant admitted having made two Jack Stands and an Utensil Holder for another employe, using Company material and while on duty. In the Investigation Claimant admitted having been instructed that it was against the policy of the Carrier to work on items while on duty that were not related to the Carrier's business, and that he was familiar with such policy. The Carrier's Special Agent testified that Claimant stated to him that he realized the Jack Stands and the Utensil Holder were not for Company use.

The Carrier concluded that the Claimant was guilty of dishonesty. We, at the Board level, are not in a position to state that there was no support for such conclusion. We do not find the discipline imposed to be arbitrary, capricious or in bad faith. The Claim will be denied.

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 7th day of January 1987.