

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago and North Western Transportation Company)

Dispute: Claim of Employees:

1. That the Chicago & North Western Transportation Company violated the controlling agreement dated July 1, 1921, as amended, specifically Rule 35 when they suspended Electrician Richard Pluta for fifteen (15) days, when the evidence in the investigation was not conclusive.

2. That the Chicago & North Western Transportation Company be ordered to dismiss the discipline and make the Claimant whole for all wages, fringe benefits, railroad retirement, insurance, vacation or any other benefits lost because of this untimely disciplinary action.

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 as an Electrician at Carrier's Chicago, Illinois, California Avenue Coach Yard. On February 19, 1985, Claimant was instructed to attend a formal Investigation on the charge:

"Your responsibility for your failure to follow the Federal Blue Flag law and Rule 26 of the CNW Transportation General Regulations and Safety Rules when on February 18, 1985, at approximately 8:32 A.M. you were observed working between Engine 164 and Car 7817 on train 616 without a blue flag or engine flag."

The Investigation was scheduled for 10:00 A.M., February 28, 1985. The Investigation was convened at the time scheduled, at which time the Claimant stated that he would like to have certain witnesses present, members of the train crew. At the request of the Organization, the Investigation was postponed and rescheduled for 2:00 P.M., March 8, 1985, for the Organization to obtain witnesses that it considered necessary.

At the rescheduled Investigation on March 8, 1985, Claimant and his representative were present, but without the additional witnesses, and Claimant then stated that he was ready to proceed without the additional witnesses. Following the Investigation completed on March 8, 1985, Claimant was notified that he was assessed discipline of fifteen days suspension.

We have carefully reviewed the Transcript of the Investigation completed on March 8, 1985, and find that substantial evidence was presented by the Carrier in support of the charge against Claimant. The "substantial evidence" rule was set forth by the Supreme Court of the United States as follows:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
(Consol. Ed. CO. vs. Labor Board 305 U.S. 197, 229).

(Second Division Award No. 6419.)

While there were conflicts between the testimony of Claimant and supervisory personnel in the Investigation, this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Conflicts in testimony do not warrant overturning the Carrier's action.

We note that in the handling of the dispute on the property, the General Chairman submitted to Carrier's highest designated appeals officer a statement dated May 7, 1986, signed by six persons, who he identified as employees of Carrier's California Avenue Car Facility. In discipline cases the parties to the dispute and the Board are each restricted to the evidence introduced at the Investigation, and the record may not properly be added to following the close of the Investigation or Hearing. (Third Division Awards Nos. 25907 and 24356.)

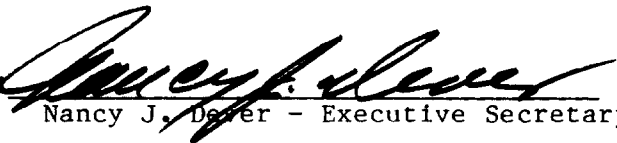
There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.