

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, System Electrician S. R. Wasson was unjustly suspended from the service of the Burlington Northern Railroad following an investigation held November 14, 1985.

2. That the investigation held on November 14, 1985 was a fair and impartial investigation.

3. That the notice of investigation provided Electrician Wasson and his representative did not contain the required advance written notice of the specific charges for which the investigation was being held and for which discipline was assessed.

4. That the Burlington Northern Railroad was procedurally defective in its assessment of discipline.

5. That the Burlington Northern Railroad failed to meet the required time limits in providing the Employees' representative copies of the Investigation Transcript and Notice of Discipline.

6. That the Burlington Northern Railroad failed to meet the requirements of the controlling Agreement in its denial of the Employees' initial claim.

7. That accordingly, the Burlington Northern Railroad be directed to compensate System Electrician S. R. Wasson for any and all wages lost as the result of the subject suspension and they restore to him any seniority rights or benefits to which he is entitled under agreement or law and which were lost or adversely affected by this suspension. Claim also includes removal of all record of the subject investigation and discipline from Electrician Wasson's 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.

The Claimant was assigned to work at St. Louis, Missouri, on and after October 29, 1985. When he attempted to check into a motel on October 28, 1985, he was told his credit card was unacceptable. Claimant thereupon drove a Carrier vehicle to Burlington, Iowa, in order to take care of his financial affairs. He did not work his scheduled assignment on October 29, 1985. Subsequently, Claimant was issued a ten (10) days disciplinary suspension for personal use of a carrier vehicle without proper authority, and absence on October 29, 1985, from his assigned work place without proper authority.

Before dealing with the merits of this case, a number of procedural issues must be decided. First, the notice charges was sufficiently specific to enable Claimant and his representatives to prepare a defense. The record shows that Claimant was fully aware of the basis for the investigative hearing. Second, a review of the entire record of this case shows that Claimant was afforded a fair and impartial investigation by the hearing officer. There is no evidence of record that the multiplicity of the hearing officer's roles deprived Claimant of any due process rights. Third, although Claimant received the notice of discipline in a timely manner, there is no evidence of record that his representative was similarly notified. This procedural error is not sufficiently serious to warrant sustaining the claim, nor is such action required by Rule 30 (i). There is no evidence that Claimant's appeal was adversely affected by this procedural error. Fourth, there is no merit to the contention that Claimant was suspended for eleven (11) rather than ten (10) days. Claimant served a ten (10) days suspension; compensation for November 14, 1985, is related but separate matter. In the absence of evidence that compensation for November 14, 1985, was argued on property (the transcript of the investigative hearing is silent on this matter), this Board does not have authority to decide the matter. Fifth and finally, the Carrier denied the Claim in a timely and minimally acceptable manner. Therefore, this case must be decided on its merits.

The Carrier has not established with substantial evidence that Claimant was absent from work on October 29, 1985, without proper authority. The Carrier did not effectively rebut the testimony of the Foreman that the usual practice of that work group was to simply notify a foreman of a worker's intent to be absent, and furthermore that the relaying of such notification through a third party was not uncommon. Additionally, Claimant telephoned his Foreman prior to the start of work on October 29, 1985, to confirm that the Foreman had received his message. Therefore, this portion of the claim must be sustained.

However, with regard to the charge of Claimant using a Carrier vehicle for personal business without proper authority, the Carrier has convincingly established Claimant's guilt. The record is clear, Claimant did not have permission or authority to drive the vehicle to Burlington. Such permission or authority cannot be deduced from the assignment of the vehicle to Claimant for work related activities.

The ten (10) days suspension shall be reduced to five (5) days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.