

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
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the C&NW Transportation Company, violated the current agreement specifically Rule 26, when they dismissed from service, Lineman-Electrician, S. L. Aubrey, after investigation held Wednesday, September 24, 1986 in which they failed to provide him with a fair and impartial investigation.

2. That the C&NW Transportation Company failed to provide a copy of the transcript of investigation as required in Rule 26e of the current agreement.

3. That the discipline assessed is both unwarranted and excessive.

4. That the C&NW Transportation Company restore Lineman-Electrician, Aubrey to service and make him whole for all wages, benefits, fringes including over-time and any other benefits due him under the contractual agreement.

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 essential facts of this case are not in dispute. The Claimant, on September 3, 1986, at about 3:30 P.M. completed work at Fond du Lac, Wisconsin. Instead of returning to Butler, Wisconsin where his personal car was parked, the Claimant drove a company vehicle directly to Two Rivers, Wisconsin to have dinner with his parents. A Carrier official recovered the vehicle in Two Rivers that evening. Following a hearing, Claimant was dismissed from service, effective September 29, 1986. On December 1, 1986, Claimant was offered reinstatement on a leniency basis, however, the offer was

declined. Subsequently, on December 17, 1986, Claimant was reinstated to service without prejudice to his claim, effective January 5, 1987. For various reasons largely under Claimant's control, he did not return to work until February 20, 1987.

Before dealing with the merits, two procedural issues must be decided. First, there is no evidence that Claimant was denied a fair and impartial hearing. The Hearing Officer did not badger the Claimant. Given Claimant's responses, the close and repeated questioning by the Hearing Officer was not improper. Additionally, it was not improper for the Hearing Officer to refuse to grant a recess at the moment it was requested. The Hearing Officer was at an important point in the examination of the Claimant, and was entitled to receive responses without an interruption.

Second, it is clear that a copy of the transcript was not furnished to the Claimant and the Organization within the time period specified by Rule 26(e). In and of itself, this technical violation by the Carrier does not mean that the claim must be sustained. The transcript was received one (1) day late. The seriousness of the technical violation should be determined in the context of the total due process procedure, in particular, the right to appeal the disciplinary action. There is no indication that Claimant's right to due process was adversely affected by the Carrier's failure to comply with Rule 26(e).

On September 3, 1986, Claimant did not receive permission from his supervisor to use a Carrier vehicle for personal business. Nevertheless, other Carrier officials, including the predecessor of his current supervisor, had permitted Claimant to use a Carrier vehicle for private purposes when it was mutually beneficial and convenient for the Carrier and Claimant. On some of those occasions, Claimant did not specifically seek and obtain permission. He acted on his own authority within vague limits orally agreed to by the parties. There is no indication in the record that Claimant's current supervisor knew of the prior informal arrangement.

Claimant should not have assumed that his current supervisor would continue the informal arrangement for personal use of a Carrier vehicle. There were opportunities prior to and during September 3rd when Claimant could have asked permission for special use of the vehicle. Claimant acted improperly. However, given the unrefuted record of private use of Carrier vehicles by Claimant, his 21 years of service, and his nearly flawless employment record, the discipline of dismissal or ninety (90) days suspension are excessive and harsh. Under the circumstances and considering Claimant's employment record, a Letter of Reprimand would have served the intended purpose.

Claimant is to be paid for lost wages during the period of September 29, 1986 and January 5, 1987. He is to be issued a Letter of Reprimand for improper use of a Carrier vehicle.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 11653
Docket No. 11470
89-2-87-2-112

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1989.

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