

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11867  
Docket No. 11744  
90-2-89-2-67

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers  
(  
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current and controlling agreement Laborer T.E. Millwood, S.S. No. 249-80-0137, was unjustly suspended from service of the Norfolk Southern Corporation on February 9, 1988 after a formal investigation was conducted by Mr. R.G. Lockery, Asst. Manager, Hayne Car Shop, on January 27, 1988.

2. That accordingly, Laborer Millwood be compensated for Tuesday, February 9, 1988 through Thursday, February 18, 1988 (8 work-days) both dates inclusive, the payment of ten percent (10%) interest rate be added thereto and his personal record expunged of any reference to this suspension from service.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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.

As a result of a formal Investigation held on January 27, 1988, the Claimant was suspended from service for eight (8) working days. The Claimant was charged with dereliction of duty, loafing and being off his assigned job.

The Board has reviewed the entire record and finds that the Carrier did not establish that the Claimant was off of his assigned job by virtue of the fact that he was in the Coach shop without his Supervisor's permission. In the instant case, the Claimant, who is assigned to the Blacksmith shop until noon, was found to be in the Coach shop at 11:57. His lunch break is at noon. He commences work in the Coach shop at 12:30 P.M. The record establishes that the Claimant brought soap and towels to the Coach shop without seeking the permission of his Supervisor. The weight of the evidence establishes that laborers assigned to split duties between the two (2) shops frequently go from one shop to the other, without the approval of their Supervisor; when it is necessary to provide supplies, as in the instant case.

The record also establishes, however, that while the Claimant was properly in the Coach shop, initially, he was found to be derelict and loafing subsequently. When two Supervisor's saw the Claimant at 11:57 A.M., he was standing idle, with his arms folded. At no time during the formal Hearing did the Claimant deny these allegations made by the Supervisors. Further, the Claimant's past disciplinary record indicates a propensity on his part to engage in idle time. Every employer is entitled to a fair day's work for a fair day's pay. As this is not a case of first impression for the Claimant, and he has had notice of the consequences of his actions, the assessment of discipline in the form of a suspension is not unreasonable. In view of the Board's findings above, the eight (8) working day suspension shall be reduced to a four (4) working day suspension; the Claimant shall be made whole for all lost wages and benefits for four (4) work days, without interest.

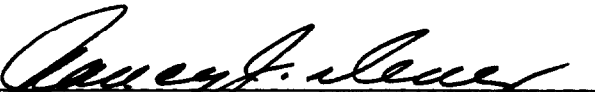
The Board rejects the Organization's argument, in this instance, that a Carrier Official engaged in multiple roles and was therefore prejudicial and pre-judgmental. The Board also finds that the Claimant and the Organization was afforded all the tenants of due process.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1990.