

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
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. D. Jackson, Laborer, Chicago, Illinois, was unjustly dealt with when suspended for a period of five (5) days (September 1, 1988 through September 5, 1988), following a hearing held on August 26, 1988.

2. That accordingly, Chicago and Northwestern Transportation Company be ordered to compensate Mr. Jackson for all time lost at the pro rata rate and the mark removed from his 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 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.

On August 24, 1988, the Claimant was notified that a formal Investigation would be conducted to determine the Claimant's responsibility for excessive absenteeism. This status was reached when the Claimant allegedly failed to protect his assignment on August 17, 18 and 19, 1988. As a result of this Investigation, the Claimant was suspended for a period of five (5) days and a mark placed on his personal file.

This Board will not question a Hearing Officer's decision when it is based on substantial evidence. A review of the evidence in the instant case reveals that the Hearing Officer's findings were not based on substantial evidence. In fact, we find that the Hearing Officer's conclusions were contrary to the evidence before him. Further, he relied on hearsay evidence. No

exception exists which permits the admissability of such evidence. The Carrier's allegation that the Claimant did not protect his assignment from August 17 thru 19, 1988 is refuted by Carrier's own daily log sheet. This log sheet has the three (3) days in question circled. The circle contains the initials of the Carrier Official who spoke to the Claimant with the words: "OK OFF." This Carrier Official did not testify at the Hearing. His unavailability was not explained. The Hearing Officer erred in relying on the self serving hearsay testimony of another Carrier Official who attributed statements to the absent Carrier Official. Also, the Hearing Officer erred in not crediting the Organization's unrebutted testimony that there were no time cards for the Claimant for the three (3) days in question. This unrebutted circumstantial evidence supports the Claimant's assertion that he protected his assignment.

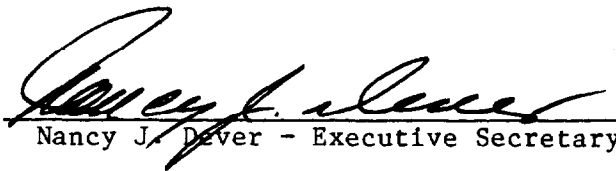
This Board finds that the Claimant did protect his assignment. As such, the Claimant is entitled to be made whole for all wages and benefits actually lost during the period he served the five (5) day suspension. Further, all reference to this discipline shall be removed from his personal file.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

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