

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11884
Docket No. 11807
90-2-89-2-119

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

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

STATEMENT OF CLAIM:

1. That under the current and controlling agreement Service Attendant A.L. Turner, S.S. 252-98-5843, was unjustly suspended from service on July 23, 1988 by Mr. D.C. Hall after an investigation was held on July 25, 1988.

2. That accordingly, Service Attendant A.L. Turner be compensated for the dates of July 23, 1988 through August 23, 1988, both dates inclusive (24 work-days), the payment of 10 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 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.

As a result of a preliminary investigation held on July 25, 1988, Claimant was suspended from service for thirty (30) days; charged with failure to protect his assignment on July 23, 1988.

Claimant requested a formal investigation which was scheduled for August 1, 1988. The formal investigation was postponed twice and subsequently held on August 17, 1988.

The Organization's contention is that Claimant complied with Rule 30 (a) of the controlling agreement when he reported off to Carrier's General Foreman at 6:15 A.M. on July 23, 1988, stating he was out of town and his car was broke down.

Rule 30 Caption Employees Unavoidably Absent:

"Rule 30 (a) in case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

There is no question but that Claimant was absent on July 23, 1988. Also, there is no question but that he reported off in accordance with Rule 30 (a).

It is noted that there is no evidence of record that when Claimant reported off at 6:15 A.M. on July 23, 1988, that Carrier's General Foreman made any attempt to find out where out of town Claimant was located. Therefore, Carrier's General Foreman did not know if Claimant was 10 miles or 100 miles away. The only answer he could give was in answer to Claimant's Representative's question.

"Q. I just want to know one question here if a man is out of town and his car is broke down, how in the name of God can he get to work. Just say your car, you, Mr. Johnson, was out of town, how would you get here?

A. I've got here. I've rented a car."

Since Carrier's General Foreman did not determine where Claimant was located there was no assurance that he was at a place where he could rent a car.

Claimant was equally derelict when he did not volunteer as to where he was located and further he offered no proof as to what it cost to repair his car or what repairs were made.

The Organization also contends that the transcript of the Investigation is incomplete in that questions 47 through 56 are missing. It is noted the investigation was taped and as far as we can determine no request was made by the Organization to review these tapes. It appears to us that the only mistake made was the questions were numbered wrong and therefore no serious mistake was made.

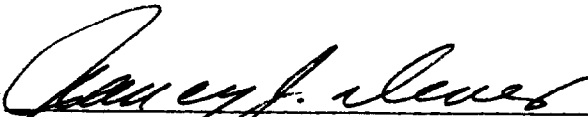
It is the opinion of this Board that based upon the facts of record the penalty should be reduced to the loss of twelve (12) working days pay. There is no provision in the controlling Agreement for the payment of interest and accordingly, no interest will be allowed.

A W A R D

Claim Sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1990.