

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11886
Docket No. 11829
90-2-89-2-171

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 Equipment Operator D. A. Stewart, S.S. No. 415-80-7683, was unjustly dismissed from service on September 9, 1988 by Mr. M. J. Adamczyk, Manager-Coster Shop, after a formal investigation was conducted by Mr. Adamczyk on August 31, 1988.

2. That accordingly, Equipment Operator D. A. Stewart be restored to his position with Southern Railway System, be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective September 10, 1988 and the payment of 10% interest rate added thereto.

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.

On August 19, 1988, Claimant was notified to attend a formal Investigation on August 31, 1988, in connection with his failure to follow instructions issued to him verbally via telephone at approximately 2:10 P.M. on July 20, 1988, in that he failed to report to the office of the Coster Shop Manager to arrange for a return to duty physical or furnish written, satisfactory evidence from a medical doctor showing that he was unable to perform the duties of his assignment by July 29, 1988.

On July 25, 1988, Claimant was notified that a further charge was being made against him in the formal Investigation to be held on August 31, 1988, that is to determine his responsibility in connection with his violation of Norfolk Southern Safety and General Conduct Rule G C R-5 in that he failed to notify the proper officer of the change in his current address no later than fifteen (15) days following the change.

Again on August 31, 1988, Claimant was given a letter charging him with failure to protect his assignment in that he failed to provide medical evidence as proof of his reasons for absence as instructed by Carrier Officers. He was notified that this charge was in addition to those detailed in letters dated August 25, 1988, and August 19, 1988.

We find that Carrier did present substantial evidence in support of the Claimant's failure to furnish medical evidence that he was unable to perform his duties as a Laborer. As to the second charge that he failed to notify the proper officer of the Carrier of his change of address. The Claimant was familiar with Carrier's Safety and General Conduct Rules Book No. 130. He was presented with a copy of these Rules and signed for them on June 26, 1987, G C R-5 was among these Rules. Carrier's witness testified that he went to Claimant's home; there was no furniture in the house and the air conditioner was removed from the house. At that time, a neighbor was sitting on his porch across the street and he told the witness that Claimant had not been there in approximately three (3) weeks. The witness then contacted the landlord, the owner of the building. The landlord stated to the witness that the contents of the house were removed July 29, 1988. The Carrier's witness testified further that his first knowledge that Claimant's address had changed was July 7, 1988, when he first went out to Claimant's house and found no one was living at that address. We find that Carrier produced substantial evidence to support the charge of Claimant's failure to keep Carrier informed of his current address.

It is also the opinion of this Board that the charge dated August 31, 1988, was not a surprise to Claimant. He was aware of the fact he did not protect his assignment and he did not provide evidence of his reasons for absence as instructed by Carrier Officers.

As stated in Second Division Award 11261:

"In discipline cases the burden is on the Carrier to produce substantial evidence support of the charge. The 'substantial evidence' rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla, it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(Consol. Ed. Co. vs Labor Board, 304 U.S., 197, 229.)

(Second Division Awards 6419, 11179, 11180, 11184, 11239, 11240, among others.)

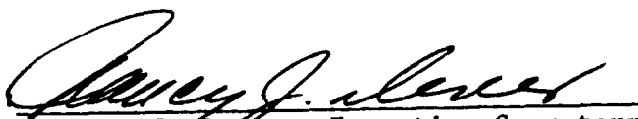
We find based upon the record, Carrier has proven their charges. Therefore, based upon this fact and Claimant's past record; the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dever - Executive Secretary

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