

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11892
Docket No. 11688
90-2-88-2-231

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
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(Michigan-Wisconsin Transportation Company

STATEMENT OF CLAIM:

1. That, under the current Agreement, the Michigan-Wisconsin Transportation Company (former C&O Railway Company) unjustly suspended Machinist Jack Gerbers for a period of thirty days actual suspension March 28, 1988 through April 26, 1988, and a sixty-day record suspension.

2. That, accordingly, the Michigan-Wisconsin Transportation Company compensate Machinist Jack Gerbers thirty days' pay at the pro-rata rate of pay in effect, beginning March 28, 1988 through April 26, 1988, and all other benefits attached to his employment; and that the sixty (60) day record suspension be removed immediately and his record cleared.

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 the result of a formal Investigation held on February 2, 1988, the Claimant was assessed a thirty (30) day actual suspension and a sixty (60) day record suspension for allegedly tampering with the air monitoring equipment aboard the Steamer Sparton on November 30, 1987.

A review of the Investigation transcript indicates that no substantial evidence was produced that proved that Claimant was guilty of the charge. The Carrier admits the evidence contained in the record is largely circumstantial. The Carrier's main argument is that Claimant could have been in a position to tamper with the equipment. While Claimant had access to the monitoring equipment, so did several other individuals. None of the witnesses testified that they observed Claimant tampering with the equipment and no motive for Claimant's alleged action was introduced at the Investigation.

That portion of the Claim requesting pay for the thirty day suspension has been settled by another tribunal, leaving only the matter of the sixty day record suspension to be decided by this Board.

Based on the foregoing, the sixty day record suspension shall be removed from the Claimant's record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1990.