

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison Topeka & Santa Fe Railway Company erred and violated the contractual rights of Mr. Manuel Preciado when they assessed his personal record with twenty (20) demerits as a result of an investigation held on May 15, 1986.

2. That therefore, the twenty (20) demerits along with all trace of the investigation being held be removed from his personal 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 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 were given due notice of hearing thereon.

Claimant was employed by the Carrier as an Electrician at its San Bernardino Shops in San Bernardino, California.

On May 1, 1986, the Carrier notified the Claimant to appear for a formal Investigation in connection with the following charges:

"... your alleged indifference to duty and not devoting yourself exclusively to your duties and being out of your work area between the hours of 1:23 p.m. and 2:28 p.m. on April 25, 1986, a possible violation of Rule 15, Rule 16 (paragraph 2) and Rule 17 (paragraph 2), Form 2626 Standard, General Rules for the Guidance of Employees 1978 edition."

The Hearing took place on May 16, 1986. On May 27, 1986, the Carrier notified the Claimant that he had been found guilty of all charges and was assessed discipline of 20 demerits on his personal record. He was warned that he now had a balance of 45 demerits and that 60 demerits would subject him to dismissal. The Organization thereafter filed a Claim on Claimant's behalf, challenging his discipline.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being out of his work area for over one hour on April 25, 1986.

Although the Claimant argues that he was "performing a naturally human function necessary not only for comfort but also for the sake of his health," the record reveals that he was away from his work area and he was supposed to be performing certain tasks that he had been assigned by his supervisor. It is clear that he was in violation of the Rules.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

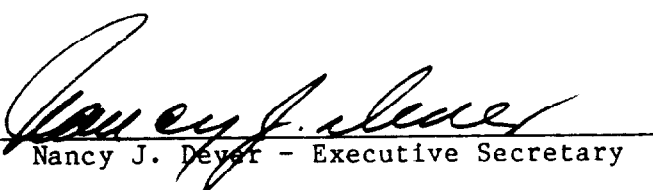
In the case at hand the Claimant received 20 demerits for being out of his work area. Given the nature of the infraction and the Claimant's previous work record, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary or capricious. Therefore, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.