

The Second Division consisted of the regular members and in addition Referee Donald E. Prover 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. M. Cole, Laborer, Chicago, Illinois, was unjustly dealt with when suspended for a period of five (5) days following a hearing held on December 8, 1988 and April 25, 1989.

2. That accordingly, the Chicago and NorthWestern Transportation Company be ordered to compensate Mr. Cole 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 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.

Claimant was employed as a laborer at Carrier's Diesel Shop. On October 24, 1988, during working hours he was observed using a pay telephone from approximately 11:15 A.M. to 11:40 A.M. Under date of October 26, 1988, Claimant was notified to attend an Investigation on November 1, 1988; charges as follows:

"Your responsibility for excessive use of the telephone for personal business on October 24, 1988."

Several postponements took place. On December 8, 1988, the Hearing Officer proceeded with the Investigation without Claimant being present. Claimant's representative was present and stated Claimant was not present because of medical reasons.

At the December 8 Investigation the Shop Superintendent testified that he observed the Claimant on the telephone from 11:15 A.M. until 11:40 A.M. During this period of time he told Claimant it was time to get off the telephone. Sometime later he noticed that the Claimant was still on the telephone, the Shop Superintendent then stood by the telephone until Claimant got off the telephone at 11:40 A.M. Also at the Investigation the Diesel Shop Foreman testified that he observed the Claimant on the telephone from about 11:15 A.M. until 11:40 A.M. During this time he told the Claimant twice that he was on the phone long enough and to get off the phone but Claimant did not respond either time to these directives.

The December 8 Investigation was recessed and Claimant was notified that it would be recessed until he was able to return to work. Under date of April 4, 1989, the Claimant was notified that the Investigation was scheduled for April 25, 1989. Claimant did not appear at the Investigation, however, his representative was present. Claimant's representative stated the Claimant was not present due to medical reasons. At the April 25 Investigation the Superintendent testified that on March 1, 1989, he had observed the Claimant near Carrier's property walking around a van. Based on this observation of Claimant, Carrier decided he was well enough to attend an Investigation which was set for April 25, 1989. Following the April 25, 1989, Investigation Claimant was notified under date of May 3, 1989, that he was subject to 5 days suspension.

The Organization argues that the discipline assessed the Claimant was unjust, arbitrary and capricious and that the individual observed by the Superintendent on March 1 was not the Claimant.

We do not agree with the Organization's argument in this case. The Superintendent emphatically stated at the April 25 Investigation that it was the Claimant (and not some other individual) that he observed moving about. We have no reason to question the Superintendent's statement. The Board has not been furnished with any substantial evidence that would indicate the Claimant was not physically able to attend the April 25 Investigation.

It is our conclusion that the Claimant was guilty as charged.

In our opinion 25 minutes continuous use of a telephone by an employee for personal business while on company time is excessive.

The Claimant, during the 25 minute span he was on the telephone was directed 5 times by his supervisors to get off the telephone prior to 11:40 A.M. Under the circumstances we do not consider the discipline assessed in this case to be unjust, arbitrary or capricious.

A W A R D

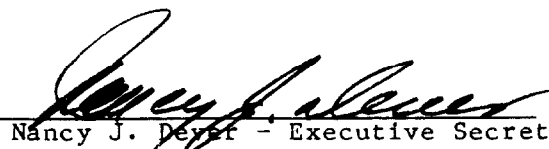
Claim denied.

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Award No. 11992
Docket No. 11902
91-2-90-2-7

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

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