

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
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(Chicago and Northwestern Transportation Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. N. Washington, Laborer, Chicago, Illinois, was unjustly dealt with when suspended for a period of five (5) days following a hearing held on October 13, 1989.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to compensate Mr. Washington 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 assigned as a Laborer at Carrier's M-19A facility in Chicago. On September 14, 1989, the Claimant informed the Carrier that he would not be reporting for duty on September 20, as he was required to go to court. Claimant did not report for duty on September 20.

Under date of September 26, 1989, Claimant was directed to appear for an Investigation; the charge was as follows:

"Your responsibility for violating the 'Equipment Management Absenteeism Policy'. Your absenteeism became excessive when you were absent on September 20, 1989."

Following the Investigation the Claimant was notified he was disciplined to the extent of being suspended for five days.

We have reviewed the Investigation testimony and find that the Investigation was conducted in a fair and impartial manner. The Organization argues the Claimant was denied a fair and impartial Investigation because the Hearing Officer denied the Claimant the right to cross examine the witnesses. While on the surface this would appear to be a serious charge a review of the Investigation testimony indicates the Hearing Officer afforded the Claimant several opportunities to question the witnesses through his Representative. While this procedure is inconvenient and time delaying it nonetheless permits the accused to get his questions answered. The Claimant failed to take advantage of the opportunities afforded him. The Carrier has stated it has been the practice on the property to only allow the Claimant's Representative, when he is so represented, to ask questions. This statement was not rebutted by the Employees. We, therefore, find that the action of the Hearing Officer in this case was not prejudicial to the right of the Claimant to a fair and impartial Investigation.

The Organization argues that the Claimant's absence on September 20 could not be considered an absence under Carrier's definition of "occurrence" as contained in their Absenteeism Policy. We do not agree with this argument. The language in the Policy is clear and unambiguous and would apply to Claimant's absence on September 20. The Employees also argue that Claimant complied with the Policy by notifying his Supervisor that he would be absent. While admittedly Claimant notified his Supervisor of his impending absence the fact remains his absence to attend court was not the type of absence excluded from the definition of occurrence.

The Organization contends the Claimant was subpoenaed to appear in court, however, no evidence was ever produced to support this contention leaving the Board to conclude the Claimant appeared in court because of some personal action or inaction on his part.

In accordance with the procedures set forth in Carrier's Absenteeism Policy the Claimant, in the eight months prior to September 20, 1989, had two conferences with his Supervisors, a performance review and under date of August 28, 1989 was sent a letter of warning. The conferences, performance review and letter of warning all pertained to Claimant's tardiness and absenteeism.

Based on the evidence in this case it is our conclusion the Claimant was guilty of the charge and that the discipline assessed was warranted. The discipline was not unjust, arbitrary or capricious, as charged by the Organization.

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 16th day of January 1991.