

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

(International Association of Machinists and Aerospace
(Workers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation, (Amtrak) violated Rule 24 of the schedule agreement effective September 1, 1977, when it arbitrarily and capriciously dismissed Chicago Machinist S. Larson (subsequently reduced to a 60 day suspension) following investigation held on March 10, 1988.

2. Accordingly, the decision should be reversed, Machinist S. Larson made whole for any and all losses as a result of the decision, and his record cleared of any reference to the charge.

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 charged by the Carrier with violations of Rule "L" in that he was insubordinate in failing to change oil and filters and Rule "O" in that he absented the property without proper authority. A Hearing was held on March 10, 1988, and subsequently the Claimant was found guilty and dismissed from the Carrier's service. After appeals and conference on the property, the dismissal was reduced to a sixty (60) day suspension.

The Organization raised procedural issues. A careful review of the record fails to establish a sufficient factual base to fully support the Organization's position with regard to the specificity of the charge and the handling of the Investigation. The Board finds no procedural violations. We therefore turn to the merits.

On January 31, 1988, Claimant was assigned to change out engine oil by his Foreman at approximately 1:00 P.M. When the Foreman returned, the Claimant was gone. The Foreman was informed by the tool man that Claimant had become ill and returned home for medicine. The Foreman testified that Claimant was frequently sick on the job, had recently left due to illness and on the day of the incident was feeling ill. The Foreman was the only supervisor on duty in the Claimant's location of the Back Shop.

Our study of the transcript finds no support for a violation of Rule "L". The Foreman states that when Claimant left for home without permission, he was insubordinate. Claimant never refused an order or was insubordinate in the usual meaning of the word. While there is dispute in the transcript over the extent of work performed, Claimant was given instructions to perform specific work and left the office to do so. With respect to Rule "O" the facts indicate that Claimant did leave without obtaining appropriate permission from his supervisor. In failing to obtain that permission, the record supports Carrier's finding of guilt.

In turning to the quantum of discipline we find that Claimant had the responsibility to obtain appropriate permission and was well aware of that responsibility. Claimant did not make a serious attempt to find his supervisor. The Board finds it difficult to believe that the Claimant had enough time to punch out, leave his card on the desk, ask a fellow Machinist to inform the Foreman he had become ill and gone home, go upstairs, get his clothes and keys, drive home, and take his medicine, yet could not find a few minutes to call his supervisor before he "passed out."

In this record, the Claimant had a clear responsibility and failed to get the appropriate permission to leave. However, the transcript clearly contains sufficient evidence that his supervisor was aware that Claimant had gone home ill. In fact, the tool man informed the Foreman and the Foreman saw the Claimant in the parking lot driving his car off the property. In these instant circumstances, where there was clear knowledge of Claimant's illness and no insubordination, we find the discipline excessive.

The facts of this case require less discipline than the Carrier imposed. Considering the imposed discipline with respect to the specific circumstances at bar and the employee's past record, the Board holds that the sixty (60) day suspension be reduced to ten (10) working days, with the Claimant made whole for all lost time, in excess thereof.

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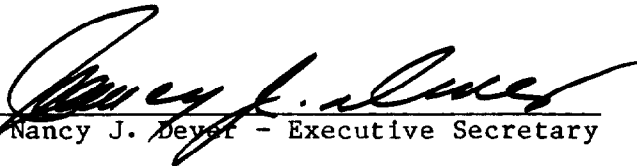
Award No. 12099
Docket No. 11868
91-2-89-2-176

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1991.