

(REVISED)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12103  
Docket No. 11896  
91-2-90-2-33

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician J. P. Adkins was unjustly treated when he was dismissed from service on May 31, 1989 following formal hearing held on April 27, 1989 for alleged violation of Rule "M" of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Transportation Company be ordered to restore Electrician J. P. Adkins to service with all rights unimpaired, including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions and the loss of wages to include interest at the rate of ten percent (10%) per annum.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 notified by letter dated April 11, 1989, to attend a formal investigation concerning alleged violation of Rule M which reads in pertinent part:

"Every personal injury suffered by an employee, and any injury to another employee or person, of which an employee has personal knowledge, must be reported without delay to his immediate supervisor."

Following the formal Hearing held on April 27, 1989, the Carrier dismissed the Claimant.

The Organization denied that the Claimant violated the Rule. It further argued that the penalty was excessive. The Organization focuses upon the sequence of events in arguing that Claimant's actions complied with the Agreement, in that he reported the incident as soon as he became aware of it.

The instant facts are that Claimant moved an alternator diode bank weighing approximately one hundred pounds on March 27, 1989. On the following day Claimant experienced pain. On March 31 and April 5, 1989, because the pain persisted he went to the emergency room. The physical examination at the emergency room and follow up with his personal physician on April 6, 1991, diagnosed tendonitis. Following that knowledge, Claimant reported the incident on April 7, 1989.

Rule M requires no delay in reporting an incident to the proper Carrier authority. Herein, the Board finds eleven (11) days elapsed before the report was made. The evidence is sufficient to sustain a finding of guilt and the disciplinary action in this case. The imposition of dismissal is justified based upon the facts and the Claimant's prior disciplinary record, irrespective of the positive marijuana test in the physical examination.

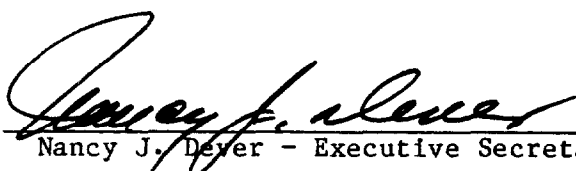
Upon the complete record, the Board finds that the Carrier has sustained its burden of proof. The Carrier's disciplinary action will not be disturbed.

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 7th day of August 1991.