

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12132
Docket No. 11867
91-2-89-2-203

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: (
(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated the controlling Agreement, Rule #34, but not limited, when they unjustly suspended Machinist G. M. Jordan, Atlanta, GA., from service without pay, beginning 3:30 p.m. October 11, 1988, and ending 3:30 p.m., October 25, 1988.

2. That accordingly, the Southern Railway Company be ordered to pay Machinist G. M. Jordan for all lost time wages, with rights unimpaired and clear his record of 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 waived right of appearance at hearing thereon.

Following a preliminary investigation held September 27, 1988, Claimant was found guilty of failing to protect his assignment. In accordance with Rule 34 (c) a formal Investigation was held on October 5, 1988, and thereafter the Claimant was found guilty as charged with "failure to properly protect (your) job assignment, in that within the last 30 days you were late 2 days, left early 1 day, absent 7 days, and only reported off 1 of those days." Claimant was assessed a fifteen day suspension.

There is no dispute in the record on the above facts. The Organization has pursued this case on the grounds that the Claimant had good cause for all such absences. The Organization points to the fact that Claimant left early to see his doctor over a problem with blood pressure, was late one date due to car problems and called in sick and reported off on the first day of the seven consecutive work days due to an illness well understood and accepted by the Carrier.

The Board has reviewed the transcript and the full record of this case. The Claimant has an admitted responsibility to protect his assignment. Rule 30 requires that the Carrier be notified even in cases of illness or other good cause. The Claimant admits that he did not notify the Carrier when he called on September 15, 1988, that he would be off beyond that one day. The record here, as well as over other days confirms that Claimant failed to properly notify the Carrier. This Board finds no evidentiary record to substantiate that Claimant had good cause for leaving early, coming late or being absent on the days in question. Even if such were the case, and the record does not provide substantiation, Claimant violated Rule 30 in failing to properly notify Carrier that he would be absent from service.

This Board takes note of the record with particular attention to the Claimant's mental health problems and past discipline record. The letter dated October 4, 1988, from the Mental Health Center does not specifically relate to the dates in question, but does indicate the seriousness of the Claimant's problem.

No matter how inclined this Board may be toward appreciating the mental problems of this long term employee, his discipline record precludes our finding that Carrier's judgment was arbitrary and capricious or the discipline excessive. Claimant has repeatedly failed to properly protect his assignment. Claimant has repeatedly been reprimanded and suspended for the same Rule violation without a significant change in behavior (Public Law Board 4170, Case No. 7). In this case, it has not been demonstrated that the Claimant has taken increased responsibility for properly performing his job responsibilities and obligations, that the cause of his inability to protect his assignment on September 16, 19, 20, 21, 22 and 23, 1988, was due to his mental problem or that the Carrier's determination and course of action was non-progressive. In full consideration of this record, the Board will not substitute its judgment for that of the Carrier.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of September 1991.