

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12249
Docket No. 12153
92-2-90-2-295

The Second Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That CSX Transportation, Inc. violated Rules 30 & 32, but not limited thereto, of the controlling Agreement when it suspended Machinist Apprentice J. A. McSween for 90 days following an investigation held on December 12, 1989.

2. That accordingly, CSX Transportation be ordered to reinstate Machinist McSween for all pay and benefits lost (made whole) as a result of said suspension and remove all reference to the charges 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 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 charged with conduct unbecoming an employee of CSX Transportation for allegedly using foul and abusive language and threatening another employee with a hammer. After a Hearing on the property on December 12, 1989, Claimant was informed by letter from the Carrier dated January 10, 1990 that he had been found guilty as charged, but that the assessment of discipline would be delayed pending the results of psychological testing and evaluation of the Claimant.

On April 30, 1990, Carrier informed Claimant that a review of the medical information which had been submitted showed no diagnosis of major mental illness, and he was assessed the penalty of dismissal. On July 26, 1990, the Carrier and the Organization reached an Agreement to reinstate the Claimant to active service and to reduce the penalty to a 90-day actual suspension, provided that he enrolled in Carrier's Employee Assistance Program. The Claimant was then reinstated without prejudice to his rights of appeal, and the Organization progressed this appeal of the 90-day suspension.

After carefully reviewing the record in this case, the Board is satisfied that there is substantive evidence that Claimant was guilty as charged. While Claimant's testimony conflicted with the evidence presented by the Carrier, determining the credibility of witnesses is not the function of this Board, and we will not substitute our judgment for that of the Hearing Officer.

Although the Organization raised numerous procedural objections, a review of the whole record demonstrates that the Claimant received a fair and impartial Hearing. The Organization conducted a vigorous defense at the Hearing and actively pursued all relevant points on behalf of the Claimant. Similarly, although Carrier was late in furnishing the Organization with a transcript of the Hearing, there is no indication that this hampered the Claimant in perfecting this appeal.


The Board therefore finds no basis for interfering with the Carrier's disposition of this matter.

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 15th day of January 1992.