

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. R. Emlund Stationary Engineer, Chicago, Illinois, was unjustly dealt with when suspended for a period of ten (10) days (February 16, 1990 through February 25, 1990), following a hearing held on February 7, 1990.

2. That accordingly, Chicago and Northwestern Transportation Company be ordered to compensate Mr. Emlund 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 charged with excessive absenteeism for being absent on January 22, 1990; this absence combined with another on December 21, 1989 would constitute two occurrences of absenteeism in violation of the Carrier's "Equipment Management Absentee Policy." After a Hearing on February 7, 1990, Claimant was found guilty as charged and assessed the penalty of a 10-day suspension.

Carrier's absentee policy consists initially of an informal system of conferences and then a formal four-step progressive discipline system providing for a (1) Letter of Warning, (2) a 5-day suspension, (3) a 10-day suspension, (4) dismissal. Once an employee has proceeded through the informal system and is placed in the formal system, succeeding steps of the system can be triggered by "two occurrences of an absenteeism or tardiness in two months." Claimant had previously received a 5-day suspension under Step Two of the system.

The Organization contends that Claimant was denied a fair and impartial Hearing in that (1) he was not notified of the precise charge against him since the first occurrence on December 21, 1989 was not listed in the Notice of Investigation, and (2) he was not allowed to personally cross-examine the Carrier's witness.

The Board finds that the charge as formulated by the Carrier was sufficiently precise to allow the Claimant to adequately prepare a proper defense. The charge recited the triggering event, which was Claimant's absence on January 22, 1990, for progression to the next step in the discipline system; there was no element of surprise and no ambiguity involved, and Claimant and his Representative were clearly aware of the nature of the charge.

As to the Carrier's practice on this property of allowing a Claimant to freely make statements, but limiting the cross-examination of witnesses to questioning by the Claimant's Representatives, the Board is in agreement with a previous Award involving the same parties which upheld this practice (Second Division Award 11993). A review of the record demonstrates that the Organization conducted a vigorous defense and was able to pursue all relevant points on behalf of the Claimant, and that all of the Claimant's rights were well-protected.

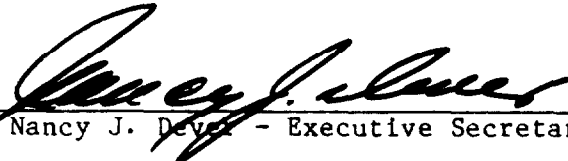
The Board finds that there is substantive evidence that Claimant was guilty as charged and that he received a fair and impartial Hearing. We therefore find no basis to disturb the Carrier's decision in this matter.

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 19th day of February 1992.