

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

(International Association of Machinists and  
( Aerospace Workers  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Council Bluffs, Iowa Machinist R. R. Colliver (hereinafter referred to as the "Claimant") from service for a period of ten (10) days.

2. That accordingly the Carrier compensate Machinist R. R. Colliver for all wages lost while suspended, additionally, credit Machinist Colliver for time lost for vacation and other benefit rights, and that record of the investigation proceedings, including reference to his unjust discipline, be expunged from his personal 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 and tardiness for being tardy on four occasions and absent on one occasion. After a Hearing on November 9, 1989, Claimant was found guilty as charged and assessed a 10-day suspension under the Carrier's progressive discipline system.

The Organization objected to one of the dates listed in the notice of Investigation as being in excess of the 30-day time limit provided for in Rule 35(c) of the Agreement. This objection was not raised in a timely manner at the Hearing, however, and under numerous precedents of the Board must be considered as having been waived.

It also argues that the Claimant was denied a fair and impartial Hearing, contending that the Hearing Officer showed partiality towards the Carrier and asked the Carrier's witness leading questions. The Board would note, however, that disciplinary proceedings are not in the nature of criminal trials and strict rules of evidence are not applied. While the Hearing Officer asked some leading questions, a review of the record demonstrates that the Hearing itself was conducted in a fair and impartial manner, and that the Organization conducted a vigorous defense and was able to actively pursue all relevant points on behalf of the Claimant.

The Organization also objects that the Carrier's Discipline System was not bargained for with the Organization but was unilaterally imposed and is in conflict with Rule 20 of the Agreement. We find no such conflict, and this Board has consistently upheld a Carrier's right to unilaterally establish general rules of conduct when they do not contravene the terms of the Agreement.

The Board finds that there is substantive evidence that Claimant was guilty as charged, and we find no basis for disturbing 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. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1992.