

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
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer L. Douglas, Springfield, Illinois, was unfairly dismissed from service of the Chicago and Illinois Midland Railway Company effective January 15, 1990.

2. That accordingly, the Chicago and Illinois Midland Railway Company be ordered to make Mr. Douglas whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; 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.

Carrier instituted a new Discipline Policy effective May 1, 1988, which specified various types of conduct which would subject the employee to disciplinary action through a "demerit" system, known historically as the Brown System. The Disciplinary system provided in pertinent part:

"(D) Employees who accumulate a balance of 100 'demerits' or more will be subject to dismissal, following investigation and review of the employee's Formal Discipline Record."

Following an assessment of discipline on January 9, 1990, Claimant had amassed a total of 175 demerits. The January 9 assessment was appealed by the Organization and the claim was denied in Second Division Award 12219. All prior disciplinary actions had been taken after Claimant had waived his rights to formal hearings and were thus not subject to appeal.

On January 15, 1990, a Hearing was held to review Claimant's discipline record. The Hearing record shows that Claimant had a history of serious, repeated disciplinary violations. At the conclusion of the Hearing, Claimant was assessed the penalty of dismissal.

The Organization objects that the Discipline Policy is not valid in that it is not part of the Agreement and was unilaterally imposed by the Carrier. It also contends that Claimant did not receive a fair and impartial Hearing since the discipline was announced at the conclusion of the Hearing, thus showing that the Hearing Officer had predetermined Claimant's guilt.

As to the validity of the Discipline Policy, this Board has consistently upheld the right of Carriers to unilaterally impose general Rules of conduct such as the Brown System, provided they do not contravene the terms of the Agreement, and employees who do not comply with such standards are subject to discipline.

On the merits of the instant claim, none of the discipline assessed is any longer subject to appeal. The question for the Board is thus not whether Claimant was guilty of any specific charges, but whether he had accumulated a balance of 100 demerits or more, which under the Disciplinary Policy would subject him to dismissal.

The Board finds that the review Hearing was conducted in a fair and impartial manner and that sufficient evidence was produced that Claimant had accumulated the specified number of demerits. We therefore find no reason to interfere with the Carrier's disposition 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 29th day of April 1992.