

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12357
Docket No. 12379
92-3-91-2-172

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: ((International Brotherhood of Electrical Workers
(Soo Line Railroad Company

STATEMENT OF CLAIM:

1. That the Soo Line Railroad Company violated the current agreement when it unjustly and unfairly suspended Electrician Dean D. Dueppen from service for five (5) days on May 21, 1990.

2. That the Soo Line Railroad Company be ordered to compensate Electrician Dean D. Dueppen for all lost wages and benefits and clearing 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.

The Claimant was employed as an Electrician by the Carrier at Bensenville, Illinois. One of Claimant's duties was to throw switches on the West end of the diesel house to let engines in and out of the house. The Claimant had been performing this duty at least since October 1, 1989, even though he was working under a physical restriction placed on him by his personal physician. On March 26, 1990, the Claimant informed the Manager of Locomotive Services, that he no longer could handle the switches because of a lifting restriction to his back. Under date of March 27, 1990, his Supervisor addressed a letter to the Claimant reading, as follows:

"Per our conversation March 26, 1990, concerning the lifting restriction placed on you by your personal doctor, I do need an update of this restriction for the company's records, on or before April 13, 1990."

The Claimant did not comply with his Supervisor's request by April 13, 1990. Under date of April 23, 1990, the Claimant was notified to attend a formal Hearing. Claimant was charged with alleged insubordination. Under date of May 15, 1990, the Claimant was notified he was assessed a five day actual suspension for failure to comply with instructions.

The Carrier argues that the evidence supports the finding of responsibility, that the discipline assessed was not capricious, excessive or arbitrary and that it was the Claimant's own financial irresponsibility which kept him from complying with Mr. Hunt's directions.

The Employees argue that the Claimant did not receive a fair and impartial Hearing. We have reviewed the Hearing testimony and find no basis for the Employees argument. The Hearing Officer brought out all pertinent facts and Claimant and his representative were given every opportunity to question witnesses. At the Hearing the Claimant testified that he was unable to comply with Carrier's request because his personal doctor would not furnish any information until an overdue bill was paid. The Claimant did not explain at the Hearing why the bill was not paid, therefore, the Board assumes it was not because of hardship reasons but rather was not paid for some other reason. Inasmuch as the restriction was placed on the Claimant by his personal doctor we believe that Carrier's request under the circumstances was reasonable and warranted and that the Claimant's inability to comply was brought about by his own inactions, i.e., failure to pay his doctor's bill.

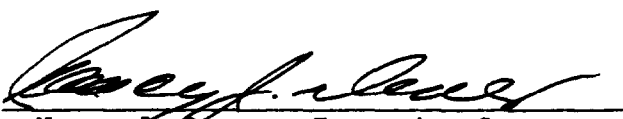
It is our conclusion that Carrier's action in suspending the Claimant was justified and was not capricious, excessive or arbitrary. Accordingly we will not disturb the discipline assessed in this case.

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 10th day of June 1992.