

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12562
Docket No. 11980
93-2-90-2-95

The Second Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(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 employee D. L. Smith (hereinafter referred to as the 'Claimant') from service for a period of five (5) days.
2. That accordingly the Carrier compensate Machinist D. L. Smith for all wages lost while suspended, additionally, credit Machinist Smith 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 employe 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 late to work on two occasions, 30 minutes once and 15 minutes the other time. Thereafter he received an injury while away from work and asked to be marked off for sickness. His request was refused. He then asked for the days off as personal leave days and this was taken under advisement as the approving carrier official was not present. The request was subsequently denied and because Claimant had earlier been placed on the new discipline system, he was suspended for five days.

The Carrier has not denied Claimant's contention that he asked for light duty or to take leave for the days he would be absent. It denied his request and then charged him with failure to obey the rules. As noted by the Organization this put Claimant in a catch-22 situation where he should not work if injured, but would be disciplined if he did not work. The Carrier was under an obligation to either grant Claimant's request for leave or deny it at the time. Its failure to do so caused Claimant to be uncertain as to his responsibilities. Its disciplining of Claimant can not be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 8th day of September 1993.