

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12580
Docket No. 11982
93-2-90-2-86

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
(Illinois Central Railroad

STATEMENT OF CLAIM:

"That the Illinois Central Railroad violated the current and controlling Agreement between the International Association of Machinists and the Illinois Central Railroad dated April 1, 1935, as revised and amended, when it harshly and unjustly disciplined (removed from service on December 12, 1990) Machinist Carl Hazelwood.

That the Illinois Central Railroad reinstate Machinist Carl Hazelwood to service, make him whole for any and all losses incurred as result of the investigation conducted on February 21, 1990, and clear his service record of all reference to the incident."

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 dismissed for alleged violation of Rule G.

The Organization initially contends that Claimant should be reinstated because the Carrier failed to respond to the initial

claim in a timely manner. Rule 36(a) provides in pertinent part that:

"Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Form is being placed over substance. The purpose of Rule 36(a) is to ensure that each side has adequate notice of the position of the other and that a claim cannot be held indefinitely without answer by a carrier. Here the Carrier had taken action against Claimant and it was he who was claiming that action to be erroneous. Claimant was not disadvantaged by the delay except to the extent that the decision of the Hearing Officer that he be discharged was not finalized by the highest designated Carrier official. Carrier concedes that Claimant might be entitled to damages between the time the claim should have been answered and the date it was answered. Carrier is directed to pay Claimant for that period, i.e., for the time lost between March 25, 1990 and April 2, 1990.

Claimant was discharged after a Hearing at which it was found that he had appeared intoxicated at work and been unable to properly perform his duties. Claimant denied that he had consumed alcoholic beverages on company premises or had alcohol in his possession. He denied being intoxicated; however, Carrier officials testified to the contrary and Claimant did not request a blood alcohol test to prove his innocence after having been found sitting at a table in the locker room 20 minutes after having been directed to go to work. In addition, Claimant admitted at the time of the incident that a bottle of alcohol in a locker next to his was his bottle. The fact that he later denied making that statement creates an issue of credibility which must be decided by the Hearing Officer and not this Board. There was adequate evidence to support the finding of the Hearing Officer and the action of the Carrier is affirmed.

A W A R D

Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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

Dated at Chicago, Illinois, this 15th day of September 1993.