

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12629
Docket No. 12570
93-2-92-2-95

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Chicago, Central and Pacific Railroad Company

STATEMENT OF CLAIM:

- "(1) That the Chicago Central and Pacific Railroad Company (hereinafter referred to as the "Carrier") violated the provisions of Rule 35 of the December 13, 1985 CC&P-IAM&AW Scheduled Rules Agreement, as subsequently amended August 1, 1991 when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Waterloo, Iowa Machinist employee W. Kane (hereinafter referred to as the "Claimant") from service for a period of five (5) days.
- (2) That accordingly the Carrier be ordered to compensate Claimant for all wages lost while suspended, additionally crediting Claimant 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 Claimant's 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.

This is a discipline dispute in which the Claimant was suspended from the service for five days for "possession of a deadly weapon while on the Carrier's property on August 4, 1991, at approximately 0200 hours." The Board finds that the claim must be sustained for a number of reasons.

The Carrier is required to conduct a fair and impartial hearing. This was not the case here. The hearing record is replete with examples of the investigating officer exceeding the bounds of propriety, even when deference is given to the great latitude that the investigating officer has in such matters. It is apparent that the focus of the investigation was to prove the charge against the Claimant, rather than serving as a vehicle for fact-finding. We note in this hearing that there were leading questions (that in many instances tended to intimidate), persistent questions on the same matters and issues when a desired response was not given, as well as a number of conclusionary statements by the conducting officer.

With respect to the merits, there is no evidence to support the Carrier's initial charge that the Claimant possessed a "firearm". The Claimant gave unrefuted testimony that on the morning in question he had in his possession a knife with a blade length not exceeding three inches. Moreover, we note that while the initial charge addressed the question of possession of a "firearm," the Claimant was subsequently found guilty of possession of a "deadly weapon." For all of the foregoing, both on procedural grounds and the merits, the claim is 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 1st day of December 1993.