

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12630
Docket No. 12573
93-2-92-2-99

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
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(The Union Pacific Railroad Company (Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

- "1. That the Missouri Pacific Railroad Company violated Rule 31 of the September 1, 1981 Agreement when they arbitrarily, capriciously and unjustly suspended Carman Arthur L. Compton for ninety (90) days effective April 12, 1991 through July 11, 1991.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman Arthur L. Compton as follows:
 - A. Returned to service with seniority rights unimpaired.
 - B. Made whole for all vacation rights.
 - C. Made whole for all health, welfare and insurance benefits.
 - D. Made whole for all pension benefits, including railroad retirement and unemployment insurance.
 - E. Pay for all time lost, including all time for holiday pay and all other compensation, for overtime that he would have received from April 12, 1991 until returned to service on July 12, 1991 and furthermore, that his record be fully cleared of these charges."

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.

Subsequent to an Investigation, the Claimant was advised that he had been assessed a 90 day actual suspension, because he had been absent from duty without proper authority from 3:30 p.m. to 4:00 p.m. on April 8, 1991 and 3:30 p.m. to 12:00 a.m. on April 10 and 11, 1991.

The Board, after careful review of the transcript of the hearing held on this matter, finds that the Carrier has met its burden of proof required in such matters as this. In so determining, we particularly note the testimony of the Carrier's officials which was not substantively rebutted by the Claimant. In addition, key assertions with respect to the Claimant's actions by the Carrier during the exchange of correspondence on the property also were not rebutted on the property.

Accordingly, while the Carrier's findings with respect to the Claimant's guilt to the charges that he had absented himself without proper authority were properly based, the discipline assessed by the Carrier is clearly an abuse of its discretion. The record before the Board shows that the Claimant has a discipline-free work record during his eight and one-half years of service at the time of the Investigation. The Carrier's responses to the Organization's appeal letters on the property make no mention that the Claimant's work record was considered when arriving at the amount of discipline to be assessed.

The Board also notes that, while the on-the-property exchange of correspondence lacks a degree of precision with respect to the claim, it is apparent from the Carrier's submission and the testimony adduced at the hearing that other factors (other than those with which the Claimant was charged) influenced the amount of discipline to be assessed.

For all of the foregoing and under the particular circumstances, the discipline is reduced to a 30 day suspension. The Organization's request for damages beyond the lost wage issue is denied because it has no Agreement support. The Carrier is directed to make the Claimant whole for the 60 day period, pursuant to Rule 31 of the Agreement.

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 1st day of December 1993.