

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13185
Docket No. 13033
97-2-95-2-61

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(CSX Transportation, Inc. (former B&OCT Railroad
(Company)

STATEMENT OF CLAIM:

- "1. The Carrier violated the provisions of the current and controlling agreement, and in particular Rule 26 of said agreement, when they improperly dismissed Sheet Metal Worker Leroy Moore, Jr., on October 24, 1994 following an investigation that was held on September 23, 1994, failure to work a Holiday.**
- 2. That, accordingly, the Carrier be required to return Mr. Moore to service with compensation for all time lost and that he be made whole for all benefits, such as, but not limited to, vacations, holidays, seniority, medical and dental benefits and any other fringe benefit he may have been deprived of due to his improper dismissal from the service of the Carrier."**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant was subject to an investigative Hearing on September 23, 1994 concerning his failure to report for work on September 5, 1994. Following the Hearing, the Claimant was dismissed from service.

The Board found in Second Division Award 13186 that the dismissal of the Claimant under other charges was proper. Thus the consideration of the instance here under review becomes moot, except as to one aspect.

In contrast to the charge and investigative Hearing in Award 13186, the Claimant was notified immediately following his September 5, 1994 absence that he was "being removed from service pending investigation", (which occurred 18 days later). Commenting on this, the Organization states:

"... [b]ecause he was not using intoxicants or drugs, did not steal company property, and was not insubordinate or was vicious, it is our contention his removal at this time means he was tried, judged, and sentenced without a fair and impartial investigation."

In response, the Carrier cites Rule 26 which states in part:

"Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

The Carrier argues that there are no specific reasons to which such pre-hearing suspensions are limited and that it acted within its rights. The Board finds otherwise. Rule 26 refers to pre-hearing suspensions in "proper" cases. Some meaning must be given to the parties' use of the word "proper." Despite the Claimant's extended unsatisfactory attendance record, the Carrier failed to demonstrate why it was "proper" to suspend the Claimant prior to an investigative Hearing as to the cause of his absence on September 5. The Award, while not concerning the moot dismissal action, sustains the claim as to the Claimant's pay loss from September 6 through September 22, 1994.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 23rd day of December 1997.