

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13258
Docket No. 13045
98-2-95-2-39**

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

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Western Lines)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Southern Pacific Transportation Company (hereinafter referred to as the ‘Carrier’) violated Rule 39, of the controlling agreement at I.C.T.F. Facility in Long Beach, California, commencing June 9, 1994, when it arbitrarily and wrongfully suspended Carman-Upgrade, Eric Torres (hereinafter referred to as the ‘Claimant’).

2. That the Carrier now be ordered to compensate Claimant for eight (8) hours pro rata rate of pay, for each day commencing June 9, 1994, and everyday thereafter (excluding duration of Medical Leave) until these violations are resolved. Additionally, that the Claimant be made whole for all fringe benefits and seniority rights; and this incident be expunged in its entirety from all the Claimant's personal and company records and files.”

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.

Based on what can best be characterized as a misunderstanding, the Claimant left work while on duty on June 9, 1994 either (a) because of his receipt of an emergency telephone call concerning his wife's pregnancy complications, or (b) because he was relieved of duty by his Foreman. His rest days were June 12-13. Commencing June 15, he was on medical leave until his return to duty August 15, 1994.

The Carrier states there is no record of disciplinary action or other notice of the June 9 incident in the Claimant's record, and there is no basis to dispute this assertion. Solely at issue is a pay claim for June 10-11 and 14. Proof is lacking that the Claimant was suspended. Further, given his wife's condition as well as his own reported disability commencing June 15, there is some doubt as to the Claimant's wish and/or ability to work on the three days in question. The Board perceives no genuine issue for resolution.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 18th day of May 1998.