

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13433

Docket No. 13347

99-2-98-2-42

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

**(International Association of Machinists and
(Aerospace Workers, AFL-CIO**
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad
(Corporation (NIRC) (A Public Corporation)

STATEMENT OF CLAIM:

1. That the Northeast Illinois Regional Commuter Railroad Corporation (which hereinafter will be referred to as the "Carrier") violated the applicable provisions of Rule 29 of the December 16, 1987 General Rules Agreement, as subsequently amended, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly assessed five (5) days deferred suspension upon Randolph Street Station Machinist employee Clener Luster, Jr. (hereinafter referred to as "Claimant").
2. That accordingly the Carrier be ordered to:
 - a) Remove from Claimant's record the five (5) calendar days deferred suspension;
 - b) Expunge from claimant's personal record any and all references to the investigation proceedings.

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.

On May 6, 1997, a notice was addressed to Claimant advising him of a hearing to be held on May 14, 1997, for his:

“...alleged failure to properly perform your assigned duties as machinist when on Monday, April 28, 1997 you failed to report to your supervisor that Highliner Locomotive 1660 was past due an FRA required ninety-two (92) day inspection as mandated by Section 229.23 of the U.S. Department of Transportation 1980 Railroad Locomotive Safety Standards and Locomotive Inspection revised January 1, 1989 and allowed the Highliner to be used in revenue service when it was unlawful to do so.

In connection therewith, you are charged with alleged violation of Northeast Illinois Railroad Corporation’s Employee Conduct Rules, II, GENERAL NOTICE....”

The basic fact that Locomotive Car 1660 was not scheduled timely for its 92 day maintenance inspection is not in dispute. The Carrier, believing it had established Claimant’s failure to either advise his Supervisor that the car was due for its 92 day inspection or to note same on the appropriate form, disciplined Claimant by assessing a five day deferred suspension.

The Organization’s defense is twofold - a procedural defect sufficient to thwart the assessment of discipline and that Carrier failed to substantiate the charges assessed Claimant.

First, the procedural charge is based upon an alleged biased hearing notice and Carrier’s introduction into the hearing of various and sundry rules and regulations that had nothing to do with Claimant’s guilt or innocence.

In the Board’s view, the notice was clear and precise. It related to the facts as the Carrier knew them to be, and it is noted the notice started with “your alleged failure.” Such words do not reflect bias upon Carrier’s behalf.

Regarding all the rules and policies introduced by Carrier's witness, it is the conclusion of this Board that such action is insufficient to warrant the modification of the discipline in this matter. The introduction of this material did, however, reflect the potential repercussions for failure to do the 92 day inspection. It is a matter that cannot be treated lightly. When the inspection is due, it must be done.

Regarding the defense of Claimant where an attempt is made to mitigate the discipline by pointing out the negligence of others in the chain of command who also failed to notice the unit was due its 92 day inspection, does not sway the Board. Claimant was an experienced Machinist. He knew that mandated inspections of locomotive cars had to be met. This is evident when he admitted in the transcript that the reporting of the unit's date of inspection "just slipped my mind."

The Board has before it only Claimant's case. After reviewing the transcript and the on-property handling, it is clear that Carrier furnished sufficient evidence to establish Claimant's culpability for the charges assessed.

Regarding the discipline, a five day deferred suspension is appropriate as Claimant, just in November, 1996, was assessed a record mark, albeit for not wearing his hard hat, a totally different charge than here concerned, but it does, nevertheless reflect Claimant's attitude regarding the rules and policies that govern his daily work.

For the record, and even though it has no bearing on this case, Claimant's Foreman was also disciplined for the same reason as Claimant was in this case. See Award 8 of Public Law Board 5692.

AWARD

Claim denied.

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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 16th day of June 1999.