

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13634

Docket No. 13525

01-2-99-2-119

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Brotherhood Railway Carmen Division/
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway violated the terms of our current agreement, in particular Rule 13.1 when they arbitrarily suspended Raymond Delano from service for three (3) working days as a result of an investigation held on January 26, 1999.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Raymond Delano in the amount of eight (8) hours pay for each workday he was withheld from service commencing February 23, 1999 through and including February 25, 1999. Additionally, the carrier compensate the claimant for any other lost wages as a result of this investigation.”

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 and his co-worker, Percy Goodblood, were charged with failing to perform their assigned duties on January 7, 1999. Specifically, the charge alleged that from 1:05 P.M. to 1:20 P.M. on that date, they were observed sitting in the B & B dump truck instead of moving snow as assigned. Following the Hearing, the Claimant was assessed a three-day suspension, and the same penalty was meted out to his co-worker, Mr. Goodblood. In Second Division Award 13633, the Board denied Mr. Goodblood's claim, concluding that there were no procedural infirmities in the case which warranted overturning the discipline, and further concluding that the charges against the Claimant had been proved and the penalty was warranted.

With one exception, the factual predicate and the arguments presented by the parties in the instant case are the same as in the Award. The Board therefore adopts the findings and conclusions rendered in that decision and incorporates them herein.

The one additional argument of note that was presented by the Organization in this matter centers on the alleged failure by the Carrier to call a pertinent witness at the Hearing. The Organization contends that the Carrier did not call the Claimant's partner, Mr. Goodblood, to testify at the Hearing. That omission was significant, in the Organization's view, because he could have explained the factual circumstances surrounding the incident and why they had been sitting in the truck. When necessary witnesses are not presented, the Board has recognized that an employee's due process rights are violated, the Organization asserts. It cites Public Law Board 6073 Award 10 for that well-established principle.

The Board has reviewed the case cited by the Organization and finds that it is clearly distinguishable from the instant case. In Public Law Board 6073 Award 10, the Organization wanted to call two employee witnesses who had some involvement in the incident precipitating the dispute and who may have provided information that refuted the charge directed against the Claimant. The Hearing Officer in that case ruled that the witnesses had nothing to do with the specific car which the Claimant allegedly failed to oil, and therefore they were not necessary witnesses. The Board concluded that the witnesses should have been called and that the due process defect required that the discipline be vitiated.

The record in this case stands on a different footing. The Claimant was advised in the January 7, 1999 Notice of Hearing that he could produce witnesses on his own behalf. The Claimant was also advised at the Hearing that he could call witnesses on his own behalf. No request was made to have Mr. Goodblood testify, and there was no direct refusal by the Hearing Officer to present him as a witness, as there was in the case relied upon by the Organization.

Equally important, absent here is any indication on this record that Mr. Goodblood's testimony would have contradicted the evidence presented at the Hearing or that his absence as a witness prejudiced the Claimant or deprived him of due process. Mr. Goodblood's statement, admitted into evidence at the Hearing, was fully consistent with the testimony at the Hearing regarding his claim that he and the Claimant were sitting in the truck to get warm. Although that statement was fully credited, it was deemed by the Carrier and, upon review, by the Board to be an insufficiently compelling extenuating circumstance given the length of time these two employees were observed not performing their assigned duties.

Rejecting as we do the Organization's contention that the Claimant was denied due process, and having fully incorporated our findings and conclusions from Second Division Award 13633, we must rule to deny the claim.

AWARD

Claim denied.

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 3rd day of July, 2001.