

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13675

Docket No. 13568

02-2-00-2-44

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Northern Indiana Commuter Transportation District

STATEMENT OF CLAIM:

- “1. That the Northern Indiana Commuter Transportation District (NICTD) violated the Agreement, specifically Rule 29, under Grievances, when it unjustly and arbitrarily assessed Carman Larry T. Wanke a thirty (30) day suspension following investigation held on February 17, 1999 and February 18, 1999.
2. That accordingly, the Northern Indiana Commuter Transportation district be ordered to compensate Carman Wanke for all lost wages and that he be made whole for all rights and benefits which he may have been deprived of as a result of this unjust and excessive discipline, and remove any reference to this from his record in full compliance with the provisions of Rule 29, details of which are well known to the Carriers.”

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.

After Investigation, the Claimant received a 30-day suspension by letter dated March 10, 1999 for being quarrelsome and insubordinate.

The record shows that on January 7, 1999 and as a result of a severe snowstorm, a substantial number of the Carrier's commuter cars were out of service. As a result, Foreman R. Vissing told employees that they would have to work overtime. However, the Claimant advised Vissing that he wanted 48 hours advance notice. Vissing told the Claimant that the overtime was mandatory. The Claimant then stated that he was sick. The Claimant did not stay for the overtime.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. The record supports the Carrier's conclusion that the Claimant quarreled with Vissing over the instruction to work overtime and then refused to stay for overtime as directed.

The Claimant's assertion that there was no order to stay for overtime or that he was sick does not change the result. Without a compelling reason to do so supported by the record, it is not the function of the Board to overturn credibility determinations made by the Hearing Officer who had the opportunity to observe the witnesses. The Hearing Officer specifically discredited the Claimant's version of the events ("Illness became an issue only after your initial refusal to work as directed by Mr. Vissing"). We find no reason in this record to set aside the Hearing Officer's determinations which were adverse to the Claimant's version of the events. In this regard, we note that employee C. W. Ponder corroborated Vissing's version of the events and, through substantial evidence, support the Hearing Officer's determinations. Ponder testified that he heard Vissing tell the Claimant that "You are required to work overtime" and the Claimant stated "no, I don't want to work overtime . . . [and] I do not see no posted Bulletin on the board that says this is an emergency situation and therefore I do not have to work any overtime." Further, according to Ponder, the Claimant then said "I'm sick, I'm going to go home."

However, we find that a 30-day suspension was excessive and arbitrary. The Claimant has a good record. Under the circumstances, a 21-day suspension will send the appropriate message to the Claimant that he must comply with the Rules and instructions of the Carrier and, if the Claimant disagrees with the application of those

Rules or instructions, he must comply and protest at a later time through the orderly processes under the Agreement - i.e., obey now, grieve later. The Claimant shall therefore be made whole less the consequences of a 21-day suspension.

The Organization's other arguments also do not change the result.

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 11th day of February, 2002.