

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13988
Docket No. 13867
09-2-NRAB-00002-080017

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.8, when they arbitrarily changed the discipline date that was mutually agreed upon between the carrier, carrier representative and the employee.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to place Carman Ryan Hale back to work after furlough with the required time off afforded to him at the original time and place of discipline.”**

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 facts of the case are that on March 27, 2007, the Claimant agreed to serve a ten day suspension without pay beginning on April 1, 2007. The days to be served were listed in the Carrier's letter of March 27 as April 1, 2, 3, 4 and 5 and April 8, 9, 10, 11 and 12, 2007.

On March 29, 2007 the Carrier faxed the Claimant another letter advising him that his suspension would not commence until after he returned from furlough status, which was to begin at the end of his shift on April 1, 2007.

The Claimant did not sign for the March 29 letter and he did not report for work on April 1, 2007.

It is the Organization's position that because the Claimant and the Carrier designated specific days to be served, the Claimant was within his rights to not report to work on April 1 and that one day should be deducted from his ten day suspension. The Organization did not argue that the remaining nine days were served during the Claimant's furlough, but instead argued that those nine days could be served after the Claimant was returned to active service. Simply stated, it requested that one day be deducted from the agreed to ten day suspension.

The Organization further points out that it seems odd that the Carrier did not know that the Claimant was scheduled to be furloughed on April 1, 2007, when it agreed to the specific days of suspension on March 27, 2007, because it was required to issue a five day advance notice as to when he would be furloughed. In conclusion it argued that the Carrier could have suspended the Claimant on April 1, 2007, and deferred the remainder of his suspension until after his return from furlough; it additionally argued that there is nothing in the Agreement that allows the Carrier to defer the suspension without negotiating with the Organization.

It is the position of the Carrier that on March 29, 2007, Mechanical East Superintendent Mayo faxed a letter to the Mechanical Department office in Rigby, for the Claimant to sign informing him that there was going to be a postponement of his agreed-to-discipline. Baker (Claimant's Supervisor) read the aforementioned letter to the Claimant and attempted to secure his signature on the letter, but the Claimant refused to sign it. The Claimant also informed the Carrier at that time that he was not going to report for duty on April 1 even though he was specifically

told to do so. Subsequently, the Claimant did in fact fail to report for his regular assignment on April 1, 2007, contrary to written and verbal instructions.

The Carrier concluded by arguing that the Claimant did not have permission to be absent on April 1 because he was specifically instructed to report for work on that date. Furthermore, that day could not be considered as being one day served of the ten day suspension; therefore, the claim should be denied.

The Board thoroughly reviewed this dispute which was the first of three cases involving the Claimant. The Board finds and holds that the issue of whether the April 1, 2007 date should be considered as having been the first day served of a ten day suspension does not need to be further examined because it has become moot due to the Claimant's subsequent dismissal in which the Board upheld Second Division Award 13990.

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 11th day of February 2009.