

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13989
Docket No. 13868
09-2-NRAB-00002-080018**

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 13.1, when they arbitrarily assessed the record of Carman Ryan Hale with a thirty (30) days suspension as a result of a hearing on May 11, 2007.**
- 2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Ryan Hale when he returns from furlough status with compensation for approximately thirty (30) days. This is the amount he would have earned had the carrier not violated the agreement."**

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 May 11, 2007, the Carrier held a formal Investigation in which it was alleged that the Claimant had a discernable pattern of absences occurring either the day before or the day after his rest days which included five days for November and December 2006 and January 2007. Subsequently the Claimant was assessed a 30-day suspension for his alleged actions.

It is the Organization's position that the Carrier did not prove a discernable pattern of absences and the charges were based upon false presumptions. It argued that the Claimant's illness may have occurred before some rest days, but there is no proof that Claimant was not ill, or that he had any intention to extend his rest day period. Additionally, it argued that the Claimant was denied Agreement due process because the Investigation was held in his absence while he was working outside of the railroad industry account of being furloughed from the Carrier's service. Therefore, it argued that the discipline should be reversed and the claim sustained as presented.

It is the position of the Carrier that a review of the Claimant's work record established a discernible pattern of marking off preceding his rest days. At the Hearing, the Carrier presented copies of mark-off-slips evidencing six absences in question. Mechanical East Superintendent Mayo explained under questioning that the Claimant left work early on two occasions before his scheduled rest days. On three other occasions, he marked off sick for the entire day before his assigned rest days. In addition, the Claimant was a "no show" on the day after his assigned rest days, in direct contradiction to a letter of instruction dated March 29, 2007. Superintendent Mayo further testified:

"It is not wrong for the Carrier to presume that an employee's illness should occur randomly and not mostly on the days preceding or following their rest days giving them a three day weekend."

The Carrier concluded by arguing that the Claimant was guilty as charged and the discipline should not be disturbed.

The Board reviewed the transcript and record evidence which constituted the second of three cases involving the Claimant and discovered that he chose not to appear at the Investigation and offered no subsequent proof that he could not attend the Hearing. The Carrier did not violate his right to a fair and impartial Hearing in this instance when it was held in absentia. The record indicates that the Carrier granted two postponements and there was no request by the Claimant for a third postponement of the May 11, 2007 Hearing. As previously stated in Second Division Award 13957 involving these same parties:

“It is further noted there is no requirement that an accused must attend their formal Investigation, but when a charged employee chooses not to attend, he does so at his own potential peril because he offers no rebuttal or alternative theory or story. See Second Division Awards 11763, 13217, 13360, 13491 and 13924.”

Turning to the merits the Board finds that all of the Claimant's absences between November 1, 2006 and January 24, 2007, occurred in conjunction with his rest days. Because the Claimant elected not to attend the Investigation the evidence that was presented by the Carrier, which was substantial, stands un-refuted. Therefore, the Board finds and holds that the 30-day suspension was appropriate. It was not arbitrary, excessive or capricious.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of February 2009.