

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14024
Docket No. 13906
10-2-NRAB-00002-090022**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Metro-North Railroad**

STATEMENT OF CLAIM:

“Appeal of discipline of ‘Sixty-One Day Suspension’ imposed upon Electrical Worker William Heady on January 29, 2009, by the MTA Metro-North Railroad. We respectfully request adjudication of said case and request that the discipline be removed from Mr. Heady’s record; that he be restored to service with seniority unimpaired and with all pay due him including but not limited to earnings lost, holiday pay, overtime he could have earned, vacation pay and other forms of compensation from the first day he was held out of service; and that he be made whole for vacation rights, made whole for pension benefits including Railroad Retirement and Unemployment Insurance, made whole for any other benefits that he would normally have earned during the time he was held out of service.”

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 record reflects that on January 29, 2009 the Carrier imposed a 61-day disciplinary suspension on Claimant W. Heady after a review of evidence adduced at the formal Investigation conducted on January 13, 2009 established that on 24 separate occasions he had reported late to his assigned position as Assistant Cable Splicer. Specifically, the Claimant admitted and the Carrier's payroll records documented that the Claimant was late on August 28, September 2, 9, 15, 23, 24, and 26, October 6, 13, 16, 20 and 31, November 6, 17, 24, 25, and 26, and December 1, 3, 4, 5, 8 and 9, 2008. The documentary evidence introduced by the Carrier established further that a great many of such instances involved reporting late by an hour or more.

While the facts underlying this dispute are thus not contested, the Organization argues on behalf of the Claimant that as he explained at the Hearing, his chronic lateness over a period of approximately four months was attributable to his need to transport his son to kindergarten and that his problem in that regard had now been resolved.

The penalty assessed Claimant Heady was, in our judgment, extremely severe. The record, however, reveals that the irregularities at issue constituted the Claimant's fifth breach of the Carrier's attendance policy, which provides for dismissal upon a fourth finding of violation. The Claimant had thus already been issued a "last chance" opportunity to improve his attendance upon penalty of dismissal when the instant disciplinary charge was brought. In that context, while harsh, it must be conceded that the discipline meted out reflected leniency on the Carrier's part under the circumstances presented.

Upon review of the record in its entirety the Board finds the discipline assessed in accord with the Carrier's policy, not inconsistent with discipline assessed in similar or analogous matters upheld by the Board and not excused by any compelling, documented justification. The Board will accordingly deny the claim.

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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 13th day of May 2010.