

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31164
Docket No. CL-30897
95-3-92-3-781

The Third Division consisted of the regular members and in addition Referee Dennis E. Minni when award was rendered.

(The Northern Indiana Commuter Transportation
(District
PARTIES TO DISPUTE: (
(Transportation Communications International
(Union

STATEMENT OF CLAIM:

"The Northern Indiana Commuter Transportation District
("District") claims:

1. Contrary to the Organization's assertions, the discipline imposed on Mr. Joseph Rzepnicki, as a result of an investigation held August 15, 1991, in connection with his violation of Rule K-2, on or about August 2, 1991, was proper.
2. Contrary to the Organization's assertions, Claimant is not entitled to compensation and the disciplinary entry on his personnel record remains appropriate."

FINDINGS:

The Third 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 on June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, a Porter, has a seniority date of November 9, 1984.

On April 10, 1989 and January 30, 1991 Claimant suffered work-related injuries due to a fall while servicing a trash barrel and slipping upon an ice and snow accumulation, respectively.

An Investigation Hearing rescheduled for August 15, 1991 for 5:00 PM was truncated by the absence of the District Chairman and the tardiness of the Claimant by some five or six minutes. However while Claimant was attempting to locate his representative, the Carrier had the Hearing concluded in a matter of minutes while the District Chairman was unable to phone the Hearing Officer because he had disconnected the phone in the hearing room. When reached the Hearing Officer refused to wait for the Organization's presentation even though the District Chairman was only minutes away from the Carrier's property.

This led to a record suspension of 15 days pending for a year and subject to be calculated in any future disciplinary determination. The rationale for this discipline was an alleged violation of NICTD's General Rule K-2.

The Organization appealed claiming it was a gross abuse of discretion and disregard for the Agreement. Absent resolution, the Carrier submitted this matter for adjudication on October 6, 1992.

The Organization's position is focused on denial of due process in that they maintain that Rules 26-29 and 33 were not followed and thus could not support a violation on the merits of the unspecific charges. To continue the Hearing knowing that the District Chairman was attempting to phone in and attend in about 15 minutes constituted an outrage to due process and contractual rights of the Claimant.

Inasmuch as Mr. McLemore admitted he unplugged the phone and by his own account set a five minute waiting period for the District Chairman to appear before unilaterally proceeding to "conduct" the Hearing, this Board is constrained to agree with the Organization's position. Even if the proffered proof against this Claimant had been adduced in an impartial and even-handed Hearing it would fall short of establishing conclusive evidence of wrong doing by Mr. Rzepnicki, to wit: sleeping on the job. Not being seen for 17 minutes, facially "appearing" to have just awakened and finding a warm mop head and 2 X 5' board in a storeroom which the Claimant had to visit in furtherance of his duties simply is not compelling evidence. Perhaps this explains the "rush to judgement" performed by Mr. McLemore.

AWARD

Claim sustained.

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 Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.