

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"Appeal of thirty days actual suspension assessed Train Dispatcher P. F. Hipsher, Ft. Wayne, Ind., October 28, 1988. Carrier file TD-FTW-88-8."

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 employees 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 waived right of appearance at hearing thereon.

Claimant was notified to attend an Investigation on a charge of marking off sick under false pretenses. Subsequent to the Investigation, Claimant was suspended for thirty (30) days.

On the day in question, the Claimant was observed in a softball uniform apparently actively serving as a third base coach.

Claimant may very well have had a bruised left calf from playing softball previously and he may have felt that he could not properly perform his duties for the Carrier. But when an employee marks off sick and is then observed engaged in certain physical activity he certainly places himself at risk and a more compelling explanation is required than the one contained in this record.

We will deny the Claim.

Form 1
Page 2

Award No. 28628
Docket No. TD-28968
90-3-89-3-381

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1990.