

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29777
Docket No. MW-29731
93-3-91-3-82

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Duluth, Missabe and Iron Range Railway
(Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

- (1) The two (2) day suspension imposed upon Laborer T. Mesojedec for alleged violation of Rules 4 and 8, on February 9, 1990, was arbitrary, capricious, unwarranted and on the basis of unproven charges (Claim No. 7-90).
- (2) The Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

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 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.

This is a reasonably straightforward discipline case which the parties have chosen to burden with unnecessary and unrelated arguments, contentions and banter.

The facts are that Claimant used a Company assigned vehicle on February 9, 1990, during an authorized meal period to deliver personal items (car keys) to his home. He did not seek or receive permission from his Foreman to use the Company vehicle for this

purpose. The distance travelled is not defined in the record, but it was apparently a short distance. The time involved apparently did not exceed the authorized meal period.

The fact situation also contains evidence that the Roadmaster made certain observations relative to this mis-use of the Company vehicle and took no action at the time of his observations to attempt to determine the reason for the mis-use of the vehicle. There is no evidence that the Roadmaster talked to either the Claimant or the Claimant's Foreman at the time of his observations. Rather, three (3) days after the observations and apparent mis-use of the Company vehicle, a notice of formal investigation was issued on February 12, 1990, to Claimant. The investigatory Hearing was held as scheduled on February 22, 1990, at which time Claimant was present, represented and testified on his own behalf. Following the completion of the 11 minute Hearing, Claimant was informed by letter dated February 27, 1990, that he was suspended from service for two (2) days as a result of this incident.

From the record as it exists before this Board, there are no apparent or obvious violations of any of Claimant's due process rights. The on-property appeal of the discipline as assessed moved into several areas of argument none of which are germane to the issue of unauthorized mis-use of the Company vehicle. This Board finds no reason to attempt to respond to these ancillary arguments.

The Hearing record contains straightforward admissions by Claimant that he did, in fact, use the Company vehicle for his own personal use. The Rules cited by the Carrier clearly prohibit the use of a company vehicle such as involved in this case. There is proven guilt in this record of the Rule violation.

This Board is always reluctant to interfere with the assessment of discipline, especially in cases where a violation is admitted by the accused employee. We are mindful, however, of the well founded purpose of discipline to teach and be corrective rather than to be harsh and punitive. In this case, there is no evidence of prior discipline against this employee or of any nature of incorrigibility of this employee. We are convinced, on the basis of this record, that a Reprimand would have served the purpose of discipline in this case and that the required loss of work time was harsh and punitive. Therefore, we order that the discipline as assessed be converted to a Reprimand and that Claimant be made whole for the time actually lost.

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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sb
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.