

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30249
Docket No. MW-30766
94-3-92-3-570

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Escanaba and Lake Superior Railroad Company

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

- (1) The Carrier's decision to impose a three (3) day suspension on Mr. E. L. Nichols, in connection with his alleged failure to obey a direct order (to report for work on Saturday, June 1, 1991), was in violation of the Agreement. (System File E&LS RP5083T)
- (2) As a result of the violation referred to in Part (1) above, Claimant E. L. Nichols shall be compensated for all wage loss suffered as a result of the unwarranted and improper suspension."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 established and holds seniority within the Carrier's Maintenance of Way Department dating from September 19, 1988. On June 1, 1991, Claimant absented himself from work. There is directly contradictory testimony on the record concerning whether he was actually given permission to do so. By letter June 10, 1991, Claimant was informed that he had been assessed three days off without pay in accordance with Carrier's policy prohibiting insubordination.

Carrier also attempted in its correspondence to impose a fictitious time-line for filing of the initial grievance. In its initial declination of the Claim, Carrier maintains that the Organization was obliged to grieve the three day discipline after it was assessed and before Claimant actually served it. Such a creative interpretation of Rule 52(a) of the effective Agreement has no basis in fact. Rule 52(a) clearly provides that "all claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based...." (Emphasis added.)

For its part, the Organization points out that Rule 51 of the Agreement between the Parties requires that "an employe in the service 30 calendar days or more will not be disciplined or dismissed without being given a fair and impartial Hearing before an officer superior in rank to the officer preferring charges." Not only was Claimant not afforded a hearing prior to the assessment of discipline, but the initial memo of discipline emanated from Carrier President Larkin, thus rendering problematic the possibility of holding a "hearing before an officer superior in rank to the officer preferring charges." (Emphasis added.)

The language of Rule 51 is clear and unambiguous. Under its provisions, Carrier was obliged to hold a "fair and impartial hearing" prior to assessing the discipline in question. It is undisputed on this record that Carrier failed to do so.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.