

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION

Award No. 24228  
Docket No. 43865  
93-3-92-1-E-1267

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

PARTIES TO DISPUTE: ( Brotherhood of Locomotive Engineers  
( Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of Engineer H.R. Hoover for reinstatement to service with full seniority and vacation rights unimpaired, for payment of all time lost from October 5, 1990, until reinstated to the service of the Carrier, payment for attending the investigation conducted on November 9, 1990; removal of the discipline from his personal record and restitution for the loss of fringe benefits, including vacation pay and reimbursement for dental, vision, medical and health insurance premiums and payments, and pension payments."

FINDINGS:

The First 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 were given due notice of hearing thereon

On September 26, 1990, the Claimant, was present at the Carrier's offices in order to participate in a formal investigation concerning charges conveyed by a letter dated September 21, 1990, alleging the Claimant's "failure to properly protect [his] assignment. . . after being recalled as an engineman at 9:00 a.m., September 13, 1990." The Claimant was approached by the Assistant Superintendent and asked to read a letter presented to him. The letter was dated September 26, 1990, and reads as follows:

"A review of Carrier records reveal that you were recalled as an engineman on September 13, 1990, and you have not yet responded.

You are hereby directed to mark up no later than Friday, September 28, 1990, and perform service consistent with your seniority.

Should any situation arise which would affect your ability to comply with the directive(s) contained in this letter or should you not fully understand the contents of this letter, you are to notify this office at (219) 883-4205, prior to 5:00 p.m., Friday, September 28, 1990.

Your failure to comply with the above could well result in disciplinary action.

Be governed accordingly."

After reading the letter, the Claimant was asked to sign an acknowledgement receipt, and he complied. The scheduled Investigation into the September 13, 1990 charge was then convened and completed, with the Claimant and the Organization defending that the Claimant acted completely within Agreement rights which gave him a 30 day period to mark up, rather than the 24 hour recall mark up asserted by the Carrier. The Claimant did not mark up by Friday, September 28, 1990.

On October 1, 1990, the Carrier sent the Claimant a notice to report to a formal investigation stating in part:

"Report for a formal investigation to be held in the Superintendent's Conference Room, Kirk Yard Main Office, Gary, Indiana, at 9:00 a.m., October 12, 1990.

This investigation is being convened to develop all facts and determine your responsibility, if any, in connection with your alleged failure to comply with the directive(s) as contained in P. W. MacFarlane's letter to you dated September 26, 1990, copy attached. . . ."

By letter dated October 3, 1990, the Carrier notified the Claimant that he was found responsible for violation of Rule 704, as a result of the September 26, 1990 Investigation, and the Carrier assessed discipline of 20 demerits. Implicit in this letter was a rejection by the Carrier of the Claimant's argument

that he had a 30-day period to mark up rather than a 24-hour period.

On October 5, 1990, the Claimant attempted to mark up for service. The crew caller informed him that he had been instructed by Management to deny him permission to mark up. On the following Monday, October 8, 1990 the Carrier telephoned the Claimant and informed him that he had been relieved from service for non-compliance with his September 26, 1990 letter.

The Investigation, called for October 12, 1990, was postponed until November 9, 1990. On November 15, 1990, the Carrier advised the Claimant that he had been found responsible for violating Rule 700, and was dismissed from service.

We find no double jeopardy involved in the instant case; and we find that substantial evidence of record supports the Carrier's determination that the Claimant was insubordinate by his failure to comply with the Carrier's directive of September 26, 1990 to mark up no later than Friday, September 28, 1990 and perform service consistent with his seniority. The Claimant had an obligation to obey the Carrier's directive; and thus he had the right to file a grievance challenging the Carrier Official's action. Refusing to comply with the written directive from this Carrier Official was insubordination, regardless of the underlying merit of the Claimant's position that he had 30 days in which to mark up after recall.

Section 153 of the Railway Labor Act, as amended, is devoted to the peaceful resolution of minor disputes and designed to preclude employees and/or their Labor Organizations and Carriers from resorting to other means of resolving minor disputes. The Claimant was responsible for a major violation of Carrier's Rule 700 when he did not comply with instructions. The fact that the Claimant attempted to mark up on October 5, 1990, being notified by letter dated October 3, 1990, that the Carrier did not accept his position as stated at the September 26, 1990 Investigation has been considered by the Board, and forms a basis, along with the long period of time he has been out of service, for this Board to return the Claimant to service with all rights unimpaired, but without backpay for the period subsequent to November 15, 1990.

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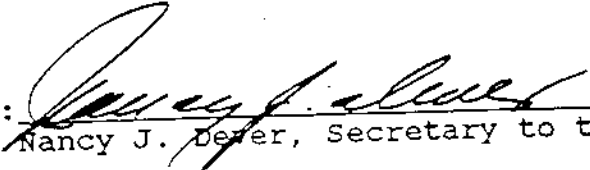
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Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Attest:

  
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 22nd day of June 1993.