

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it improperly assessed Machinist Helper H. E. Hudson a ten-day deferred suspension to be placed on his record on October 26, 1971, as a result of an investigation held on September 27, 1971.
2. That accordingly, the Norfolk and Western Railway Company be ordered to clear the record of Machinist Helper Hudson of the ten-day deferred suspension as well as the charges and investigation pertinent thereto.

Findings:

The Second 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.

Following a hearing, claimant was assessed discipline of 10 days deferred suspension due to his failure to perform assigned work and being absent without permission on Thursday, September 16, 1971.

At the hearing, claimant's representative attempted to question foreman Fozzard, the principal Carrier witness, relative to the latter's attitude toward claimant and any ill will that he may have against claimant. However, the hearing officer conducting the investigation denied claimant's representative the right to develop this line of questioning. Claimant contends that as a result he was deprived of a fair and impartial hearing.

This Board is mindful of Carrier's right to hold and conduct disciplinary hearings in such a manner so as to develop the pertinent facts as expeditiously as possible. Yet in doing so the employee must be given latitude to present his defense in a manner which enables him to refute the evidence produced against him. To deprive him of this right is to deprive him of the due process requirement of a fair and impartial hearing. And we believe such was done in the instant case.

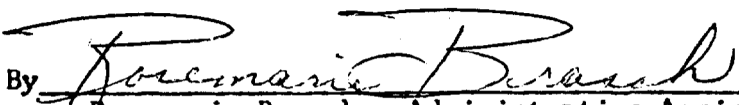
Proof of the charges against claimant hinged on the testimony of foreman Fozzard who testified that on the claim date he observed claimant away from his work area on three occasions and that claimant made no attempt to clean up his work area. And when claimant's representative sought to elicit any possible bias, prejudice, or ill will that Mr. Fozzard might have had toward claimant he was rebuffed by the hearing officer. Claimant, in our opinion, should have been allowed to pursue this line of questioning at the hearing. When he was not allowed to do so he was deprived of a fair and impartial hearing. Due to this deprivation of due process we will allow the claim without deciding the merits thereof.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of July, 1974.