

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

Parties to Dispute: ( System Federation No. 21, Railway Employees'  
( Department, A.F. of L. - C.I.O.  
( Carmen  
( Southern Railway Company

Dispute: Claim of Employes:

1. That under the current Agreement, Painter D. D. Cook, Chattanooga, Tennessee was unjustly suspended from service on January 4, 1974.
2. That accordingly, the Carrier be ordered to pay Painter D. D. Cook for all time lost from January 4, 1974 through January 8, 1974.

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 were given due notice of hearing thereon.

The facts giving rise to the instant claim are as follows. At 2:00 PM on Thursday, January 3, 1974, claimant and Painter G. H. Hodge were instructed by their Supervisor, Painter Foreman S. J. Morris, to clean and prepare the ends of an engine for painting. Fifteen minutes later, Foreman Morris found claimant out in the Barn (a storage section behind the Paint Shop) smoking a cigarette while Hodge was inside the Paint Shop carrying out the instructions given him. When Foreman Morris again instructed claimant to go to work on the engine inside the Paint Shop, he punched out. Claimant subsequently stated that he had punched out inasmuch as he was not feeling well at the time.

Based on the incident of January 3, 1974, claimant was charged with failure to carry out the assignment given him by Foreman Morris, and following a Hearing conducted on January 8, 1974, claimant was suspended from January 4, 1974 through January 8, 1974. It is the Organization's position that claimant was suspended without just and sufficient cause in violation of Rule 34 of the applicable Agreement.

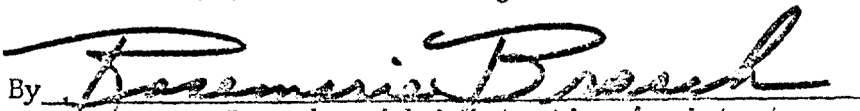
The transcript of the Hearing clearly establishes that claimant deliberately failed to comply with the instructions of his Supervisor on January 3, 1974. And while much was said at the Hearing relative to an employees' right to smoke, it must be emphasized that claimant was not disciplined for smoking on the morning in question. Rather, he was disciplined for failing to comply with the instructions given him by his Foreman. This, we conclude, has been established by substantive evidence justifying the mild discipline imposed. Rule 34 was not violated and the claim lacks merit.

A W A R D

Claim denied.

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 24th day of February, 1976.