

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the Agreement of September 1, 1949, as subsequently amended when on September 3, 1975, Car Repairer D. L. Anderson was given a formal investigation for charges that were not specific, resulting in unreasonable and capricious assessment and a thirty day (30) deferred suspension against his service record.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning of Rule No. 37 of the controlling agreement.
3. That because of such violation and capricious action, Carrier be ordered to remove such thirty (30) day deferred suspension from the said employees' service record.

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.

This dispute involves a thirty (30) day deferred suspension assessed Carman D. L. Anderson for allegedly failing to remove a "Skate" from Track 56 which skate was instrumental in causing a costly derailment at Roanoke, Virginia.

Carrier initially interposed defective procedural handling of this discipline case as a bar to reviewing it on its merits. It contends that the Board cannot accept jurisdiction of the dispute because it has not

been handled in the usual manner in accordance with the Railway Labor Act as well as Article V, Section 1(a) of the August 21, 1954 Agreement. Such argument is founded on the fact that the grievance was initially filed with the Master Mechanic rather than with the Foreman. The Employees argue that the General Foreman issued the discipline notice and the appeal was therefore made to the Master Mechanic, his superior.

Awards were cited supporting both positions. The Board finds Carrier's position to be persuasive. We agree with the Findings as set forth in Second Division Award No. 4027, reading in part:

"Presumably, therefore, in designating him the parties had other things in mind than the probable granting of claims at the first step;-- perhaps procedural uniformity, so that there would be no room for doubt where to file claims; or perhaps the convenience of claimants and others in the local presentation and initial handling of all claims, wherever they may arise. The latter motive is strongly indicated by the provision of Rule 34(a) that the grievance is to be taken to the immediate supervisor by the local committee or by its representative. But whatever their motive, the record discloses no valid ground upon which this Board can overrule the parties' express agreement in Rule 34(a) as idle, useless or unnecessary. It cannot be too often stressed that the parties are competent and entitled to make their own agreement (Illinois Central R. Co. v Whitehouse, C.C.A. 7, 212 Fed. 2d 22), and that an award of this Board which alters, changes or amends a collective bargaining agreement is an usurpation of power. (Hunter v. A.T.&S.F. Ry., C.C.A. 7, 171 Fed. 2d 594). Consequently we do not feel justified in following the precedent of Award 3280 in this situation."

See also Second Division Awards Nos. 4031 and 4175. Too, as pointed out by the Carrier Member of the Board, in a discipline dispute between the same parties covered in Award 7363, the claim was initiated with the Foreman though he had conducted the hearing and issued the discipline notice.

We will dismiss the case for improper procedural handling.

A W A R D

Dismissed.

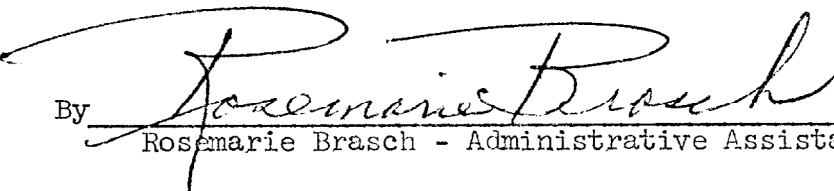
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Award No. 7568
Docket No. 7436
2-N&W-CM-'78

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 23rd day of June, 1978.