

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
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{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current agreement Electrician, W. J. Kemp was unjustly suspended by the National Railroad Passenger Corporation (Amtrak), when on March 20, 1978, he was assessed seven (7) days of suspension.
2. That accordingly, the National Railroad Passenger Corporation be ordered to pay all wages lost on account of the suspension and that his service record be cleared of the charge.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The claimant was employed as an electrician with 15 years seniority at the time of his suspension.

On February 15, 1978, Claimant was directed to attend a formal investigation into his alleged violation of Rule K of the Carrier's Rules of Conduct. Rule K reads:

"Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

The charge was made in connection with the claimant's alleged improper workmanship and inspection on two "SM-150 E. A. R. B. safety regulators from car #5403 on February 2 and 3, 1978."

From the outset, the organization argues the discipline must be set aside because of a procedural defect. They point out that the hearing was held beyond the time limits provided for in the agreement. Without passing on the merits of this argument it must be noted that this objection was not made at the hearing. It is well established that procedural objections such as the one being made here must have been made at the hearing or the organization is considered as having waived their right to make the objection before the Board.

Safety regulator panels such as the two in question are regularly inspected and tested by the claimant. He does so after the panels are worked on by a repairman and before the panels are installed in cars. As part of the normal procedure in handling these regulator panels, the repairman puts an initialled sticker on a panel when he finishes it, signifying it ready for testing. It is also normal procedure that the employee who does the testing, such as Mr. Kemp, also puts an initialled sticker on the panel signifying it is ready for installation.

The two panels in question were definitely found to be defective. The testimony of Mr. Rhodes, Foreman, leaves no doubt that both panels were in an inoperable condition when attempted to be installed in car 5403.

In reviewing the evidence to determine if Mr. Kemp was responsible for the panels being in an inoperable condition, it is the Board's conclusion that there is substantial evidence to support the charges. The claimant's action in departing from normal procedures was responsible for the panels going to the car, before they were properly tested. As noted above, the normal procedure is for the inspector, such as Mr. Kemp, to inspect and test the panel and if the panel tests as operable the inspector is to apply his work sticker to the panel. This signifies it is ready for installation. However, the transcript reveals through a clear admission by the claimant that the panels were not serviceable at the time he applied his inspection sticker. The procedure as accomplished by Mr. Kemp was strictly contrary to normal procedure.

The claimant's defense essentially was that although he applied his stickers before the panels were determined to be operable, he didn't intend for the panels to go to the car until he had tested them. He contended that he did not release them and that "someone must have removed it, seeing the test sticker on it". If we are to believe Mr. Kemp, then this is not really a defense as much as it is a precise explanation as to why the panels went to the car in an unserviceable or inoperable condition. The fact that Mr. Kemp applied his sticker before the inspection and testing procedure was complete led the person who picked the panels up to believe the panels were cleared for installation. The purpose of the stickers procedure is obviously to prevent this kind of thing. Clearly, had Mr. Kemp followed standard procedure, the incident would in most probability not have occurred.

The organization also argued that the panels could have been damaged in transport to the car. However, there is no evidence to support this assertion.

In reviewing the question as to whether the amount of discipline was appropriate, we note that although the claimant was initially given a seven-day suspension he was returned to work after only 5 days. We cannot say that a 5-day suspension for an offense of this nature is arbitrary or capricious.

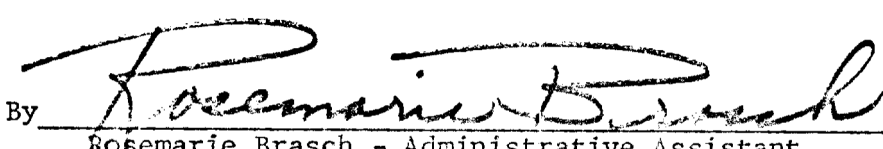
A W A R D

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 7th day of January, 1981.