

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

That Machinist W. E. Frey, who worked for Louisville and Nashville Railroad at Radnor, Tennessee was unjustly suspended for 30 days without pay as a result of a most unfair investigation conducted March 15, 1979.

As a result of improper discipline issued Carrier should reimburse Machinist Frey in the amount of \$2,358.24 which was lost as the result of the improper suspension.

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.

Claimant, Mr. Frey, was notified by letter dated January 22, 1979 to appear for an investigation on January 30, 1979. The purpose of the investigation was to determine his responsibility in connection with the derailment of two engines at about 2:30 A.M., January 14, 1979. At the request of the Organization involved, the investigation was postponed several times and eventually held on March 15, 1979. Following that hearing the penalty herein complained of was assessed.

At the outset, the Organization raises the defense of procedural error claiming that the hearing was conducted in an unfair manner. It alleges that the hearing officer conducted the investigation in a belligerent style and at times refused to allow the Organization to submit evidence on behalf of the Claimant. In effect, it claims the transcript reflects an inaccurate record. A careful review of the transcript reveals that while some of the remarks were contentious, they would not constitute reversible error. However, statements at the close of the transcript lend credence to the position of the Organization. The Claimant testified that he felt the hearing was not fair and impartial. While such statements are not unusual, under the circumstances the notes which follow are somewhat enlightening. The Hearing Officer made the following statement:

"At the completion of this testimony of Mr. William E. Frey, he refused to sign it on the advice of his General Chairman. Mr. Elmore, the General Chairman, refused also. Now I, D. H. Eblin, conducting officer, hereby order Mr. Frey to sign the above testimony. Mr. Elmore and Mr. Burns to witness it."

The Organization responded:

"Objection by Mr. Elmore: It is not my wish to sign the investigation at this time as I would like the proper opportunity to review the transcript of the investigation at my leisure for typographical errors, mistakes in actual wording, etc. However, if the conducting officer orders that it be signed, we will do so, under extreme protest and duress. This further verifies my previous objection as to the fairness of the manner in which this investigation has been conducted."

The transcript was signed by claimant and his representatives.

The foregoing illustrates conduct by a hearing officer which breaches the standards of objectivity, impartiality, and fairness long established by this Board. While it does not prove that the other allegations made by the Organization are valid it does lend credibility to its position. Under the circumstances we have no alternative but to find that the hearing was not conducted in accordance with the fairness standards required by contractual commitment and the long established principles of this Board.

There is no evidence in the record regarding the accuracy of the monetary claim. We find that claimant should be made whole for the time lost and remand to the parties to the determination of the exact amount of loss.

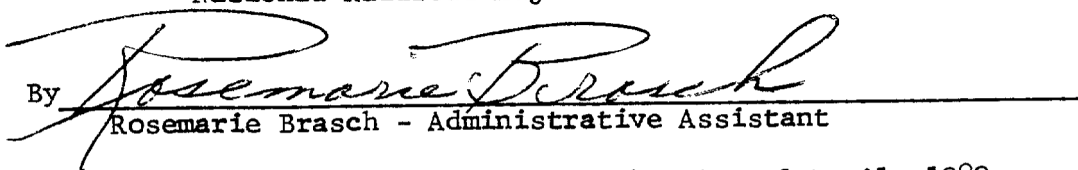
A W A R D

Claim allowed as modified with respect to monetary loss in the foregoing discussion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.