

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

(International Brotherhood of Electrical Workers
(System Council No. 7
Parties to Dispute: (
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Electrician J. A. Snow five (5) days, effective February 10, 1981.

2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician J. A. Snow to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electricians' rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period, and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and to expunge his 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 employes 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's length of service with the Carrier has been seven and one-half (7-1/2) years during which time he has not been disciplined.

On January 23, 1981, the Claimant was issued a Notice of Trial charging him with:

"1. Failure to complete eight-hour tour of duty on six occasions between 12-31-80 and 1-22-81, inclusive, namely 12-31-80, 1-5-81, 1-13-81, 1-14-81, 1-21-81, and 1-22-81.

2. Repetitive tardiness, namely being late on six separate occasions between 12-31-80 and 1-22-81, inclusive."

After a trial was held on January 30, 1981, the Claimant was assessed five days' deferred suspension. At trial, the evidentiary basis for the two charges consisted of time cards which showed that the Claimant was tardy on five occasions and that he left before the end of his shift on "1/5/81".

By referring to the "failure to complete eight hour duty" on six occasions which are set forth, it is the judgment of the Board, that the first charge, at best, is ambiguous and at worst, it is inaccurate. Tardiness has a fairly well established meaning in labor relations and is understood to mean that an employee has failed to begin his eight hour tour of duty, as scheduled. The offense of tardiness places emphasis on the start or beginning, rather than on the completion of a tour of duty which is stated in the first charge. It is true that tardiness prevents an employee from working a full shift; but it does not prevent him from completing his shift. Indeed, in light of the simple and plain meaning to be given the words in the first charge, the Claimant failed to complete his tour of duty between "12-31-80 and 1-22-81" on only one occasion, namely, on "1/5/81."

The second charge refers to "repetitive tardiness on six occasions between 12-31-80 and 1-22-81". However, the charge is seriously flawed since it fails to indicate the specific dates when such "repetitive tardiness" occurred. It should also be noted that the Carrier cannot reasonably characterize the Claimants' departure from the premises at dinner time, on "1/5/81", as tardiness.

In light of the serious deficiencies in the two (2) charges brought against the Claimant the Board concludes that there was a reasonable basis for the Claimant's testimony that he did not understand the charges. The Claimant was therefore not given written notice of the "exact offense" for which he was to be tried under Rule 6-A-3(a). He was also deprived of a "fair and impartial trial", as required under Rule 6-A-1(a) since he did not understand the charges upon which the disciplinary action was based. See, for example, First Division Award No. 2370. Consequently, there is no need to address the merits of the dispute.

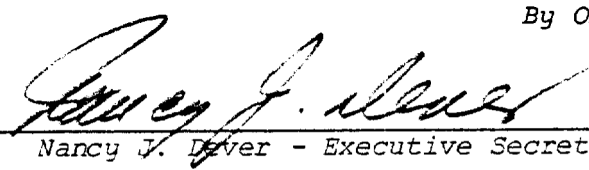
Since the Claimant's suspension of five (5) days was deferred, he lost no wages or benefits as a result thereof. Claimant's record shall be cleared.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of May, 1984