



Award No. 5046

Docket No. 4757

2-CRI&P-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'

DEPARTMENT, AFL-CIO (Machinists)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the controlling agreements the Carrier unjustly suspended Machinist Solomon B. Cooksey from service for a six (6) months period from September 12, 1963 to March 11, 1964.

2. That accordingly the Carrier be ordered to compensate Machinist Solomon B. Cooksey for all time lost due to said suspension, at the regular rate of pay for Machinist Welders (his regular assignment at time of suspension), plus wages lost as the result of being deprived of his regular turn at overtime due to being on suspension, plus wages lost for holiday work due to being on suspension. Further consider this a claim for credit for vacation privileges which would have been earned by Machinist Cooksey if he had not been placed on suspension and for any other rights or privileges which would accrue to him as a regularly assigned employe of this company if he had not been placed on suspension.

EMPLOYEES' STATEMENT OF FACTS: As the result of an investigation held at Silvis, Illinois, September 3, 1963, Machinist Solomon B. Cooksey was suspended from service for a period of six (6) months, from September 12, 1963 through March 11, 1964.

On August 29, 1963 the following notice was addressed to Machinist Solomon B. Cooksey:

"Mr. Solomon B. Cooksey
654 19th Avenue
Oneida Heights
Silvis, Illinois

A hearing will be held in the office of Master Mechanic, Rock Island Lines, Silvis, Illinois at 9:00 A.M. C.D.S.T. Tuesday, Septem-

A. Well, I feel that Mr. Schroeder was right in telling Mr. Cooksey to sit down and behave himself.

Q. Mr. Hayes, do you consider Mr. Cooksey's conversation with Conductor Schroeder to be of a quarrelsome nature?

A. Well, I would say it was more of a demanding nature than quarrelsome."

Rule "N" requires courteous deportment of carrier's employees. Clearly, such deportment was lacking in claimant's attitudes toward Conductor Schroeder.

While Conductor Schroeder attempted to properly perform his duty on Train No. 5, claimant first attempted to claim his tickets had been processed, then abused Conductor Schroeder and demanded special treatment.

Claimant's defense relies solely on his belated tale of excuses and amends for his actions, i.e., that he was (1) over tired; (2) not familiar with train meal check procedures; and (3) unsteady on his feet in the fast moving train. Claimant's witness, Mr. Nolan, produced no testimony to refute the firm testimony of carrier witnesses. According to his testimony, he did not see the incidents in either the parlor car or dining car, or hear Mr. Cooksey's conversation with Conductor Schroeder.

Credence could not be given to the excuses offered by the claimant when viewed in the light of the fact that he has been a railroad employee for over twenty (20) years, was a locomotive fireman for five months of this service, and is presently an official of the machinists' organizations.

Claimant's abject behavior and abusive actions against Conductor Schroeder were clearly indefensible on claimant's part.

CONCLUSION: Claimant was properly disciplined for his proven violation of Rule "N" on July 26, 1963.

Carrier believes it has shown that the discipline assessed claimant, suspension for only six months, was not in any way either capricious, excessive, or in abuse of carrier's discretion. The employees have not presented any evidence of substantive value to declare that this discipline should now be removed. Therefore, your board is requested to deny this claim.

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.

After an investigation pursuant to notice on a charge of his violation of

"Rules G and N of Form G 147 Revised" on July 26, 1963, Claimant was found to have violated Rule N, which did not include a charge of intoxication. He was suspended for six months.

It is contended that he was not given a fair hearing because it was not prompt, having been held on September 3 pursuant to notice on August 28. The asserted reason for the delay was the necessity of a preliminary investigation, and it is not shown that the delay was excessive, or that it prejudiced Claimant's rights in any respect.

It is next contended that the hearing was not fair in that Claimant was not allowed to be represented by two members of the local committee in addition to the General Chairman. The contention is not that his representation by the General Chairman was not duly authorized, or was in any respect inadequate, but only that by general and long established practice the local committeemen had been permitted to be "present, with no loss of time while attending investigation." Reliance is placed on Award 3845 of this Division, which found on an identical showing that such practice had recognized

"that the local committees were entitled to **represent employees** in the handling of disputes, controversies and investigations with local officials during their working hours, without loss of time." (Emphasis added).

As this Division had pointed out in several awards, the above reference in Award 3845 to representation by local committeemen of employees in investigations was erroneous, not having been included in the claim, involved by the issues, nor established by the evidence, which, as in this case, was limited to the right of local committeemen to attend investigations during regular hours without loss of time. While their attendance as committeemen has obviously been in a representative capacity so far as the organization and general membership is concerned, it has not been shown to have involved the personal representation of employees under investigation, or the right of such employees to be represented by all of them.

Any possible objections on the above grounds were waived by the Claimant's subsequent statement, prior to the taking of evidence, that he was ready to proceed with the hearing. Other technical and procedural objections made are without substance.

The evidence is clear and essentially uncontradicted, except in relatively minor respects. Claimant was enroute to Rockford after attending a golf tournament on a hot day. He was drinking the second of two beers which the parlor car attendant had served him. He at first said that he had given his tickets to the flagman but at the conductor's insistence finally produced his rail and parlor tickets from separate places. Before leaving the car the conductor instructed the attendant to serve Claimant no more beer; learning this by ordering and being refused a third beer, Claimant angrily set out to find the conductor, in the process overturning a table with some drinks, for which he thereupon bought replacements; finding the conductor he inquired his identity and twice loudly demanded that the latter return and revoke his order again further drinks. This episode is admitted, but apparently did not occur within the hearing of other passengers.

Claimant was somewhat conspicuous, wearing a red hat and a red sport

shirt, and attracted some attention, according to five passengers whose names and addresses are shown in the record. He stepped on a lady's foot, whether by his fault or the movement of the train is not apparent, and for some reason a passenger had asked the waiter in charge of the dining car not to seat him and his wife with the gentleman with the red shirt, if they should be in the diner at the same time. The claimant went to the dining car, received a ticket on which to write his order, but without doing so asked why he was not being served; on being told that if he did not want to make out the check the waiter in charge would do it for him in a few minutes, Claimant left the diner.

There is no question that Claimant's actions were somewhat irregular; but except in the overturning of table and drinks they were apparently not offensive, nor of such impact upon the passengers as to prejudice them against the Carrier or its service or subject it or its employees to censure.

In view of Claimant's nineteen years of service without any indication of prior discipline, the deprivation of six month's employment seems grossly excessive; in fact, anything in excess of two months' suspension seems clearly unjustified. The claim must be sustained as to the excess four months' suspension.

Claim 2, which is for much more than the wage loss prescribed by Rule 34, is sustained only to the extent of the wage loss suffered by the claimant during the excess four months' suspension, but the reduction of his suspension from six to two months carries with it a corresponding effect upon vacation rights. Wage loss means the loss of wages under regular assignment, less earnings from other sources.

AWARD

Claim sustained to the extent expressed in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.