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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6522
Docket No. 6383
2-IC-CM-'73

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

Parties to Dispute: { System Federation No. 99, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Illinois Central Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Car Inspector H. B. Wederstrandt, Jr., was unjustly suspended from the service of the Illinois Central Railroad from 12:01 A.M., October 31, 1971 until 12:01 A.M., November 14, 1971.
2. That accordingly the Illinois Central Railroad be ordered to compensate Car Inspector H. B. Wederstrandt, Jr., for all time lost account of the aforesaid unjust 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 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.

Car Inspector H. B. Wederstrandt, Jr. was found guilty of striking a fellow employe and was suspended from the service of the Carrier for 15 days. The issue before this Board is whether the record substantiates the finding of the hearing officer that the claimant was guilty of the alleged offense.

The transcript of the investigation reveals that the only evidence adduced that would tend to implicate the claimant was the testimony of Carman Roser, the employe who was struck. Roser testified that he was struck on the back of his head by a blunt object as he was leaving the locker shanty. He further testified that he did not see who struck him but that it was his supposition that it was the claimant in that he was the only other person "in the shanty behind me at the time". He further testified that he also did not see the claimant immediately after he was struck.

It is well established that in discipline cases this Board does not hold the carrier to the degree of proof required in criminal cases. For that reason we have held that circumstantial evidence can be sufficient to meet the burden of proof required in these cases. There must, however, be more than scintilla of evidence upon which the finding is based. The evidence in the present case is so paltry that we must find that the carrier has not met the burden we require; that substantive evidence of probative value be adduced to support the charge.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.