

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6591
Docket No. 6426
2-SCL-FO-'73

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

Parties to Dispute:

{ System Federation No. 42, Railway Employees'
Department, A. F. of L. - C. I. O.
(Firemen & Oilers)
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Laborer F. J. Turner, Id. No. 56083, was unjustly suspended from service at Jacksonville, Florida for ten (10) days from October 14 through October 23, 1971, inclusively.
2. That accordingly, the carrier be ordered to reimburse aforesaid employee for all loss of time at pro rata laborer's pay.

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.

Claimant, a Laborer and Inside Hostler's Helper under the Firemen & Oilers Agreement, was utilized briefly on the date in question to perform Outside Hostler's work. While working outside his assigned limits his engine derailed.

On the day of the derailment, Carrier, without knowledge of the Organization, received a statement from Claimant admitting responsibility, electing not to have an investigation, and expressing his willingness to accept Carrier's discipline. It is apparent that the "confession" was prepared by Carrier.

The Organization contends that Carrier violated the discipline rule (Rule 28) in that Claimant was deprived of the opportunity to be represented because no notice was given to the Organization until after the discipline was assessed.

Carrier contends: 1) this Division has no jurisdiction to consider the claim because Claimant was working as an Outside Hostler's Helper at the time of the derailment, and 2) Claimant has the right voluntarily to waive formal investigation and accept discipline.

With respect to Carrier's assertion that the Division has no jurisdiction, we find it is without merit and shall consider the merits of the dispute.

The relevant portions of Rule 28 provide:

"No employee shall be disciplined without a fair hearing by a designated officer of the company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing such employee and the local chairman will be appraised in writing of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and be represented by the duly authorized representative of System Federation No. 42.

NOTE: Neither Rule 26, 27, nor 28, attempts to obligate the carrier to refuse permission to an individual employee to present his own grievance or, in hearing involving charges against him, to present his own cases personally. The effect of these rules, when an individual employee presents his own grievance or case personally, is to require that the duly authorized committee or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier."

There are awards from various Divisions that hold that an employee may waive any right to whatever procedural safeguards are available to him under the schedule agreement. See First Division Awards 11498, 14042, 17152, 15509 and Third Division Awards 929, 2339 and 18468.

Other awards hold that a Carrier does not have the right to avoid a contractual obligation with an Organization by entering into agreements with individual employees resulting in a waiver of procedural rights or other benefits. See Second Division Awards 1265 and 4096.

To hold that an employee cannot, under any circumstance, confess error and waive his rights to whatever procedural safeguards to which he is entitled results in absurdity. It is equally erroneous, however, to hold that the employee's representative under the collective bargaining agreement is not, under the language of Rule 28, entitled to be given notice prior to any action that might be taken by Carrier. It is clear that the notice requirements were intended to provide the Organization with an opportunity to assist its members.

It follows that after such notice is given to the Organization, an employee is free to pursue whatever course he wishes.

We find, therefore, that the claim must be sustained.

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.

DISSENT OF CARRIER MEMBERS
TO
AWARD NO. 6591, DOCKET NO. 6426
(REFEREE ZUMAS)

Award 6591 is not supported by law, by the Agreement, or by precedent awards of the National Railroad Adjustment Board.

There was no dispute that claimant was working as outside hostler helper at the time of the occurrence for which he admitted responsibility and accepted discipline.

The Carrier's contention that the Second Division was without jurisdiction to decide the dispute was based upon the clear and unambiguous language of Section 3, First (h) of the Railway Labor Act conferring jurisdiction over disputes involving outside hostler helpers to the First Division. The valid contention of the Carrier in this respect was simply brushed aside by the Referee with the terse statement that "we find it is without merit" with no explanation whatsoever. Issues of this nature deserve more than such off-hand treatment.

The Award is contradictory in itself. It upholds the right of an individual to waive whatever procedural safeguards to which he may be entitled in disciplinary proceedings, which certainly includes notice, but at the same time holds that the employees' representative must be given notice. Such reasoning is absurd on its face. The representative is not the one who may be disciplined.

There is absolutely no basis for the awarding of compensation. Rule 28 of the applicable agreement provides in part:

"If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for the wages lost, if any, resulting from said suspension or dismissal."

Claimant having accepted responsibility for the derailment, it follows that he was not "unjustly suspended or dismissed."

For the reasons stated, Award 6591 is in palpable error, and we dissent.

P. L. Carter

W. B. Fordwood

W. B. Jones

E. A. Wesley

L. M. Jenkins