

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 12, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. Car Inspector Harold Carlton, was unjustly suspended 20 days, beginning February 10, 1973 through March 1, 1973 inclusive, due to return to work March 2, 1973.
2. Car Inspector Carlton was erroneously charged with leaving his assignment without gaining permission from proper authority on January 11, 1973, and using abusive language when conversing with General Foreman Frank Marshall by company radio and refused to comply with instructions issued January 11, 1973.
3. That the Chicago & North Western Transportation Company be ordered to compensate Car Inspector Carlton for the twenty days he was improperly suspended.

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.

On January 11, 1973 claimant was held on duty in order to perform overtime work. At approximately 12:30 A.M. on that date Mr. Marshall, Carrier's General Car Foreman, called claimant on the radio to determine if arrangements had been made to fill the oil cans on the remaining cars of the train that was being serviced. According to Mr. Marshall, claimant retorted "Listen here, don't you try to push me damn it, because you're not going to do it, and I'm going to check out." Marshall further stated that claimant did, in fact, check out without any permission to do so.

As a result of that incident, claimant was charged with using abusive language toward Mr. Marshall, and with leaving his assignment without permission from proper authority. Following a hearing held relative to these charges claimant was suspended for 20 days. Claimant denies using abusive language toward Marshall. He also maintains that Marshall had given him permission to check out on the date of claim.

Besides contending that the foregoing charges were not proven by substantive evidence, the Organization also contends that claimant's rights were violated when Carrier failed to call Mr. Don Gray to testify at the hearing after Mr. Marshall had testified that Gray had witnessed the conversation between him and the claimant. We do not feel that any procedural rights inuring to claimant were violated as a result of Carrier's failure to call Mr. Gray as a witness. At no time during the hearing did claimant or his representative indicate to the hearing officer that they wished Mr. Gray called as a witness. If they believed his presence to be necessary then they should have exercised their right to either call him as a witness themselves, or request that the hearing be adjourned and that Carrier call Gray to testify. They availed themselves of neither recourse and should not be heard to complain at this late date.

We further believe that the charges have been substantiated by the testimony of Mr. Marshall. However, in light of claimant's unblemished personal record for a period of 19 years service with the Carrier we are compelled to conclude that even suspension for 20 days was excessive and unreasonable discipline. In light of this, suspension for a period of 5 days would have been commensurate with the offense and we hereby order the discipline imposed reduced to 5 days suspension and further order claimant compensated for the 15 days in which he was unjustly held out of service.

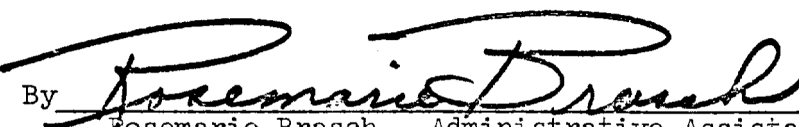
A W A R D

Claim sustained to the extent indicated, supra, in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of April, 1975.