

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7180
Docket No. 7004
2-BN-CM '76

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx Jr. when award was rendered.

Parties to Dispute: (System Federation No. 7
(Railway Employees' Department
(AFL-CIO - (Carmen)
(
(Burlington Northern Incorporated

Dispute: Claim of Employees:

- 1) That the current agreement, particularly Rule 35 (c) was violated because of lack of specific charges when Carmen D. E. Hogan was given notice of a formal investigation, held on May 20, 1974, resulting in unreasonable and capricious assessment of censure on his personal record and being withheld from service for fifteen (15) days.
- 2) That because of such violation and capricious action, Carrier be ordered to remove such fifteen (15) day record suspension from his record and reimbursement to said employee for the fifteen (15) days of 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 employee or employees involved in this dispute are respectively carrier and employee 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 received a suspension from service of fifteen days for "violation of Rules A, B, D, F, 77, 661, 662, 667, 16 and 17" as formulated and issued by the Carrier. Involved in particular was crossing between cars in an unsafe manner, when an alternative method was readily available, and the use of improper type working shoes. As a result of his actions, Claimant suffered an ankle injury when stepping onto an uneven section of asphalt flooring.

Claimant contends a number of improprieties in the conduct of the investigation. This Board finds no merit in these allegations.

The notice of investigation states as its purpose, "developing the facts and placing responsibility for your alleged injury." The consideration that the notice does not specify "your responsibility" does not relieve the Claimant of the foreknowledge that the investigation might, indeed, fix responsibility on him. Further, it is not pertinent that the notice did not refer to the specific safety rules of the Carrier which were found to be violated by the Claimant. Carrier properly referred to the specific rule violations after full investigative hearing, and could hardly be expected to enumerate them prior to development of the facts during the hearing. A review by this Board of the record of the hearing discloses that it was, contrary to Claimant's contention, a full, fair and unbiased proceeding.

The record further shows that Claimant violated certain rules of safe working procedures, and this Board sees no reason to second-guess the Carrier in its findings of such violations.

It appears, however, that the Carrier's degree of disciplinary action was not reasonable in relation to the offense. Claimant has a record of 26 years of service, and there was no showing in the record of an adverse history of compliance with safety regulations.

This Board finds that the penalty given to Claimant as a corrective measure was excessive. As stated in Award No. 6600(Schedler),

"It appears to this Board that there must be some established practice showing a reasonable relationship between discipline assessed for negligent injuries and that these penalties would bear some relationship to the frequency of injuries and the seriousness of the injury."

This Board finds the penalty in the instant case excessive and that a suspension of service for five days would have been justified. Claimant is to be made whole for loss of time worked for the last ten days of his suspension.

A W A R D

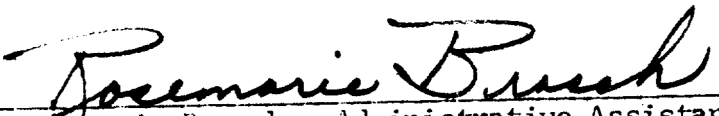
Claim sustained to the extent of reducing the penalty to five days.

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By Order of Second Division

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Attest: Executive Secretary
National Railroad Adjustment Board

By: 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of November, 1976.