

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Penn Central Transportation Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, Machinist Helper John S. Longo was unjustly dealt with when the Carrier dismissed him from service, after being charged with "Insubordination, using profane language to a supervisor and failure to perform assigned duties", on May 16, 1974.
2. That the Carrier be ordered to reinstate Machinist Helper John S. Longo with all seniority rights unimpaired, compensate him at the applicable rate of pay for all time lost, make Mr. John S. Longo whole for all Vacation benefits, Health & Welfare Traveler's Insurance and Provident Supplemental Insurance.

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 employees 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.

Petitioner contends that the Claimant was not given a fair and impartial trial in that he was questioned in the presence of the Carrier's witnesses and the trial officer used a "ping pong" method of interrogation. With respect to the merits, Petitioner asserts that there is no evidence in the trial record to substantiate the charges against the Claimant.

It is Carrier's position that the Claimant was afforded a fair and impartial trial at which substantial evidence was presented to support the charges, the discipline was fully justified, and that there is no reason to disturb Carrier's decision.

We are not referred to any rule of the applicable Schedule Agreement which obligated the trial officer to exclude Carrier's witnesses on the questioning of the Claimant at the trial. Even if, for purposes of discussion only, exclusion of witnesses is regarded as an exercisable right of the Claimant rather than as a matter within the discretion of the trial officer, the trial record shows that neither the Claimant nor his representatives requested the trial officer to exclude witnesses. In the absence of such a request, there was no reason for the trial officer to surmise that the presence of Carrier's witness was objectionable to the Claimant. To raise this procedural point for the first time after the completion of the trial and the issuance of the decision is clearly untimely and presents no valid basis for impugning the propriety of the trial.

A similar conclusion must be reached with respect to the Petitioner's objection to the method of questioning used by the trial officer. No objection on that score was made by the Claimant or his representatives. The reasonable inference from their silence at the trial in this regard is that they had no complaint. We have examined the trial record with care and do not find that the trial officer's method of questioning, referred to by the Petitioner, was prejudicial to the fair trial rights of the Claimant.

Determination of the merits of the charges on which claimant was tried concerned primarily the testimony of the foreman who was the accuser and the testimony of the Claimant who denied the charges and related his version of the incident involved. Such testimony presented sharp factual conflicts. Numerous awards have repeatedly enunciated the principles that in discipline cases the weighing of conflicting testimony and the resolution of the credibility of witnesses are functions of the carrier and that credited testimony which reasonably supports the carrier's determinations must be accepted even though such testimony was disputed. These principles are controlling here.

The record shows that Carrier has credited the testimony of the foreman and that such testimony supports the charges against the Claimant despite his denials and allegations. In connection with the Carrier's determination of the factual dispute relating to the allegations of the foreman that the Claimant failed to perform work even though made available to him by Mr. Roebuck, it is argued that such testimony was fatally deficient in that Carrier failed to produce Mr. Roebuck as a witness. For the reasons indicated, Carrier was entitled to credit the foreman's testimony. If the Claimant or his representatives believed that the testimony of Mr. Roebuck was desirable or necessary, they should have requested his attendance at the trial for questioning on the point.

No reasonable basis appears in this case to warrant rejection of the Carrier's determinations. This finding, on the record, is applicable with respect to the disciplinary action imposed by the Carrier.

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Award No. 7202
Docket No. 6959
2-PCT-MA-'77

A W A R D

Claim denied.

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 4th day of January, 1977.