

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employees:

1. That Laborer F. D. Golden was unjustly disciplined by the Illinois Central Gulf Railroad by being suspended for thirty days, beginning September 5, 1975 to October 4, 1975, following an investigation which was held on August 22, 1975.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to pay Laborer F. D. Golden for the days he would have been eligible to work during this thirty day period.

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.

The Second Division of the Adjustment Board has jurisdiction over the dispute herein.

Parties

to said dispute waived right of appearance at hearing thereon.

This is a laborer for all discipline case involving thirty days' suspension of a shop employee allegedly sleeping on duty.

The initial

a fair and impartial position of the Petitioner is that the Claimant was denied a fair and impartial hearing because the officer conducting the investigation would not permit the accused to cross-examine witnesses appearing against him and ruled that the accused to cross-examine witnesses appearing against his representative. cross-examination would be permitted only by Claimant's representative.

This Board has ruled on numerous occasions that disciplinary hearings of the nature here involved are not and cannot be conducted within the restrictive limitations of the rules of evidence or procedures found in the courts of law. We find that the officer conducting the investigation was in serious error in declining to permit the accused to cross-examine witnesses appearing in declining to permit the accused to cross-examine concept of a fair and impartial hearing on behalf of Carrier. Any reasonable concept of a fair and impartial hearing in disciplinary proceedings includes the right of the accused to cross-examine witnesses who are present along with his representative to cross-examine witnesses who are present.

As the claimant was not afforded a fair and impartial hearing, the claim will be sustained on that basis.


A W A R D

Claim sustained.

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 5th day of April, 1977.