

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 3, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Milwaukee-Kansas City Southern Joint Agency

Dispute: Claim of Employees:

1. That the Milwaukee-Kansas City Southern Joint Agency violated the controlling agreement when it improperly suspended Carman Bobby Ray Smith from service for five (5) days from January 23, 1976 through January 27, 1976, as a result of investigation held on January 13, 1976.
2. That accordingly the Milwaukee-Kansas City Southern Joint Agency be ordered to compensate Carman Bobby Ray Smith for all time lost during the period 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 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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

A review of the testimony by Carrier's Assistant Trainmaster, Carrier's Yardmaster, and Carman R. R. Neidermeyer, indicates that the 45-minute

delay of Train No. 81 can be attributed to fact that Claimant had not okayed No. 6 rail until 4:55 A.M.

Claimant attempts to justify this delay by stating that he had to close the doors on three (3) boxcars with a "pull" jack or "coffin" jack. However, Carrier's Assistant Trainmaster testified that the only tools he remembers Claimant carrying were "his light and packing iron."

The record before us indicates that substantial credible evidence has been presented to support Carrier's conclusion of Claimant's guilt.

Carrier's penalty was, therefore, not discriminatory, arbitrary, or capricious. Moreover, the penalty was not unreasonable, particularly in light of the fact that two (2) of the five (5) days of Claimant's suspension were his rest days, and thus Claimant suffered no monetary loss on those two (2) days. Consequently, we must deny the claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of December, 1977.