

The Second Division consisted of the regular members and in addition Referee Robert G. Williams 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 Mark Clay from service for five (5) days November 22, 1975 through November 26, 1975 as a result of investigation held on November 17, 1975.
2. That accordingly the Milwaukee-Kansas City Southern Joint Agency be ordered to compensate Carman Mark Clay 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.

The Claimant in this case was charged with refusing to follow instructions and after a hearing he was suspended for five (5) days. The Claimant testified his Foreman said, "Mark, would you like to go to East Kansas City for a while." The Claimant replied, "I'd rather not while you have younger men." This testimony was corroborated by another employee. The Foreman testified he instructed the Claimant to go to East Kansas City, but there was no testimony by the Foreman about the exact words he used to communicate such instructions. The record shows without contradiction that the Foreman did not contest the Claimant's statements. He just left the area and assigned another employee to the work. The Foreman's inaction at the time of the incident shows he did not treat the claimant's behavior as misconduct.

Only when the Foreman's supervisor asked about the claimant did any seriousness attach to the claimant's conduct. This supervisor had instructed the Foreman to send the claimant to East Kansas City. When the supervisor learned his instructions had not been followed, he pursued the matter with the responsible Foreman. The Foreman's only defense was that the supervisor's instructions allegedly had been communicated to the Claimant. Yet, at the hearing the Foreman did not provide any testimony of statements he had made to the Claimant to make clear that an order was being issued and not a mere request. This Board therefore finds that the Carrier's action was arbitrary and not supported by substantial evidence.

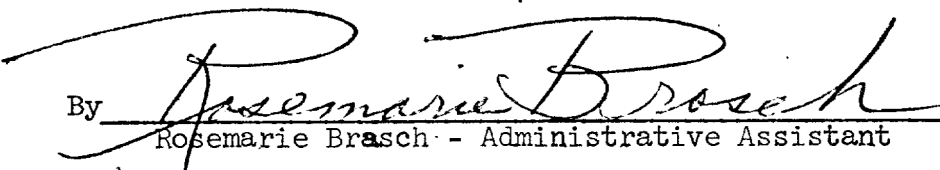
A W A R D

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 12th day of July, 1978.