

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Coach Cleaner, Mark D. Zurawski, was unjustly dealt with when he was assessed with a forty-five (45) actual working day suspension from the Reading Company (now Consolidated Rail Corporation), commencing March 2, 1976.
2. That accordingly, Coach Cleaner Mark D. Zurawski is entitled to be compensated for all lost wages, made whole for all vacation rights, pay the premiums for hospital, surgical and medical benefits for all time held out of service, and pay the premiums for Group Life Insurance for all time held out of service.

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.

Carrier charged Claimant, Employe Zurawski, with violation of Safety Rules 2 (requiring that each employe be furnished a copy of the Safety Rule Book and be conversant with and obey the Rules) and Rule 5, reading as follows:

"Safety Rule 5 - Employees who are insubordinate, dishonest, immoral, quarrelsome, or who are careless of the safety of themselves or others, or who willfully neglect their duty or repeatedly violate rules, will be subject to discipline and possible discharge from the service."

Specifically, Claimant was charged with an altercation and threatening to take the life of Captain O. P. Benjamin, Jr. of the Reading Company Police Department, with the service revolver belonging to Officer Benjamin, resulting in Claimant being taken into custody by Reading Company Police Officers O'Connell and Griffin, and charged by the General Detectives Division of the Philadelphia Police with assault and possession of instrument of crime.

The record reveals that the disturbance and fight grew out of efforts to collect an outstanding traffic ticket which Claimant claims he had paid, and which an investigation showed he had previously paid.

This entire altercation began with a claim against Zurawski that there was an outstanding unpaid traffic ticket, owed by the Claimant, for the sum of \$15.00. Claimant was called into the office of Carrier's Police Department in connection with a complaint from a Belmont Barracks Trooper over the alleged outstanding traffic warrant. Claimant strongly contended he had paid it, the trooper called a control office for confirmation. The allegation was cleared up in Claimant's favor and the trooper left the office.

It was at this point that an altercation occurred. There are conflicting accounts, but highly in Claimant's favor, is a statement by Captain Benjamin that "Bagosy referred him (Claimant) to me and advised that I knew of his past thefts from the Company and wished to know what vehicles he would have on the property". That statement provoked Claimant to call Captain Benjamin a "goddamned liar". The record reveals that Captain Benjamin requested Claimant to go with him down the stairs to a secluded area. From that point on the accounts of the altercation are directly opposite. Each claims that the other struck him first. Captain Benjamin alleges he was attacked by Claimant. Claimant alleges Captain Benjamin attacked him first. Each accuses the other of striking the first blow.

At the police station Claimant took a polygraph examination which supported his account of the affair. Captain Benjamin refused to take the examination based on his "well known disregard for their validity".

One question stands strongly before this Board. Why did Carrier not produce as witnesses, Patrolmen Bagosy, Griffin and O'Connell who were in the immediate area and at least had some knowledge of the altercation? Those three patrolmen surely could have relieved any doubt over who initiated the altercation.

While this Board normally does not resolve conflicts of oral evidence, we believe Carrier has completely failed to evaluate the evidence presented. It has accepted the statement of Captain Benjamin against the evidence and sound reasoning to the contrary.

This Board finds that Claimant was unjustly dealt with when he was suspended for forty-five (45) working days. We, therefore, direct Carrier to make Claimant whole for wages lost as a result thereof, including vacation rights, if affected. There is no showing that other benefits were affected by the forty-five (45) day suspension.

A W A R D

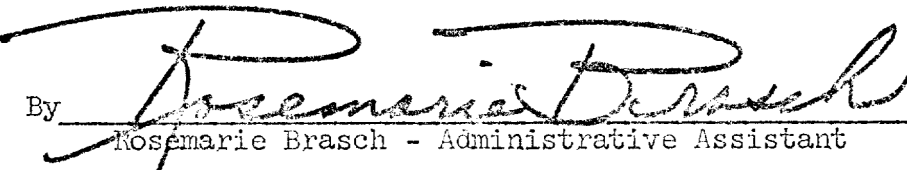
Claim 1: Sustained.

Claim 2: Sustained as per findings.

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 15th day of August, 1978.