

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, Apprentice Machinist J. E. Hart was unjustly suspended from the service of the Norfolk and Western Railway Company for a period of thirty (30) days beginning on the date of August 9, 1976, and ending on the date of September 7, 1976.
2. That accordingly the Norfolk and Western Railway Company be ordered to compensate Apprentice Machinist J. E. Hart in the amount of eight (8) hours at the pro rata rate for each day of his work week assignment beginning on the date of August 9, 1976, through the date of September 7, 1976.

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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was the subject of an investigative hearing on July 16, 1976, to determine your responsibility in connection with the throwing of a foreign object at approximately 2:20 p.m. at a Proudfoot Consultant employed by the Norfolk and Western Railway Company and being away from your place of work assignment a portion of the time between 2:15 p.m. and 2:45 p.m. both on July 13, 1976."

Following the hearing, Claimant was given a 30-day disciplinary suspension.

The Organization argues that the charges against the Claimant were "ambiguous and misleading"; and that the Carrier based its disciplinary action on "mere suspicion" and insufficient evidence.

As to the notice of hearing, Rule 37 of the Agreement reads in pertinent part as follows:

"Rule 37. No employee shall be disciplined without a fair hearing by a designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee will be appraised of the charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses without expense to the Company, and shall have the right to be there represented by the duly authorized committee. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal....."

The Board finds that the charges of which the Claimant was informed were sufficiently specific to leave no doubt in the Claimant's mind as to what he was to defend himself against before the Hearing Officer. The consideration that the Claimant denied the allegations against him does not make the offenses of which he was charged less clear. The hearing was conducted fairly, with full opportunity offered to the Claimant and the Organization for his defense.

It is unquestionably true that there are questions of credibility raised in the record of the hearing, and the testimony constituted circumstantial evidence as to the Claimant's actions. He was accused of throwing a "foreign object" at two of the Carrier's consultants. The object was neither specifically identified nor recovered for examination, nor was there testimony that he was seen actually throwing the object. The record is replete with uncontradicted testimony from three witnesses, however, which would reasonably lead the Hearing Officer to conclude that the event took place. These include testimony that the Claimant was not accompanied by the Machinist with whom he was working for the entire period in question; the viewing of the Claimant with his arm in a throwing motion; and the testimony concerning the "object" itself, are more than sufficient to outweigh the Claimant's simple denial. The Board can make no finding that the testimony resulted in an arbitrary or capricious judgment by the Carrier. Employees are entitled to reasonable protection against unsupported allegations, but, on the other hand, the employer need not be expected to provide the degree of proof required of a prosecuting attorney before a trial judge in a major

criminal case. See, for similar conclusions, Third Division Award No. 21419 (Wallace) and Second Division Award No. 6911(Norris), which in turn refers to a series of previous awards.

The offense, aired at a satisfactory investigative hearing, is not as serious as many other disciplinary matters, but nevertheless constitutes behavior unwarranted from a reasonable employee, as well as being potentially injurious to others. In this respect, the Board does not find the degree of penalty inappropriate and sees no reason to substitute its judgment for that of the Carrier.

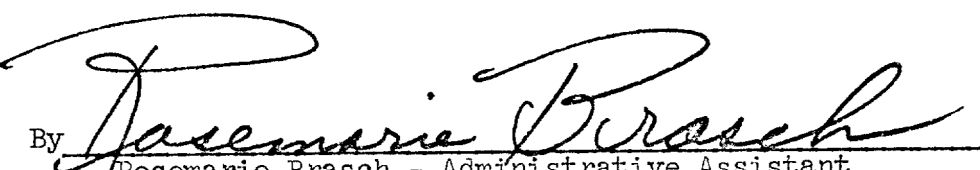
A W A R D

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 8th day of November, 1978.