

The Second Division consisted of the regular members and in addition Referee Rolf Valtin when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician W. J. Davis was unjustly dismissed from service of the Carrier effective October 1, 1976.
2. That, accordingly, the Carrier be ordered to restore him to service with all seniority rights unimpaired, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost wages, also reimbursement for all losses sustained account loss of coverage of health and welfare and life insurance agreements during the 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 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.

The claimant is a former Electrician at the Carrier's Juniata Locomotive Shops at Altoona, Pennsylvania. He was hired in mid-1973 and apparently compiled a record of wholly satisfactory service. He was discharged in mid-1976.

In 1976, July 4 fell on Sunday and was celebrated on Monday. The record is clear that the claimant was off on July 3, 4 and 5. It is not clear as to whether the overtime assignment about to be dealt with commenced on Friday, July 2 or on Tuesday, July 6. Whichever the commencement date, the overtime assignment came to an end with the completion of the 3:30 P.M.-midnight shift on Thursday, July 8.

In the sense that the claimant neither worked in his regular job nor worked under his regular supervisor, the overtime assignment was of special character. In the period in question, the ceiling in the Boiler Shop was being painted. Several Painters were assigned to the job. The claimant's function was to service them by operating an overhead crane with an attached scaffold.

At some stage during the course of the day shift on Friday, July 9, it became known that the crane had developed a defect and would be inoperable pending repairs. The claimant, still working as an Electrician at this point, was contacted and told that he was not to report for the crane-overtime work on July 9 and 10. He did as told, and the second-shift Painters on those two days painted walls by virtue of the crane's non-availability.

The Carrier's "Ex Parte Submission" gives the succeeding events as follows:

"Claimant turned in his time cards for July 9, 1976 and July 10, 1976 representing eight (8) hours overtime for each day. In doing so he signed the name T. Caporuscio as the Foreman approving the time card.

As a result of the above incident, Claimant was notified by letter dated July 13, 1976 to attend a trial on July 19, 1976 in connection with the following charges:

- '1. Cheating and dishonest conduct in regard to office records.
2. Falsifying time card for personal gain on 7-9-76 and 7-10-76.
3. Forging Foreman's name on two overtime cards 7/9/76 and 7/10/76."

If this were all there were to the case, there could obviously be no question as to the propriety of the discharge. The case, however, is not the straight-forward and unencumbered one depicted by the Carrier. The claimant cannot be exonerated -- i.e., it remains true that he committed a serious offense for which he deserves to be severely punished. But we think it would be wrongful to convict the claimant as a plain cheater and forger and thus to let the discharge stand. We are converting the discharge to a long-term suspension, directing the claimant's reinstatement without back pay but with restoration of his seniority rights.

We read the record as warranting a series of findings, the following three among them.

First, while true that the claimant turned in the time card for July 10 as alleged and while true that no good explanation exists for his ever having done so in the first place, the claimant called the Clerk on the morning of July 12 and told him that the time card had been filed in error and should be rescinded. The Clerk received the call before the time card had been processed, tore it up, and discarded it.

Second, the claimant had gone without meal allowance and without time off for a meal throughout the crane-overtime assignment. As already indicated, there is a question in the record as to whether that assignment was of a 3-day or 4-day duration. And there is additionally a question as to whether, on each of the days, the claimant was entitled to meal money and meal time at 11:30 PM as well as at 6:30 PM. But it is clear that nothing whatever had been done for him with respect to the meal entitlements. The omission was presumably the understandable result of the claimant's unusual status in regard to supervision. But the omission must nonetheless be attributed to a lack of proper managerial coordination. And what we accept is that the claimant, in inquiring on how the omission could be remedied, was told to put in a claim for an extra day via a time card with the particular person's signature on it. The claimant's testimony on this score is of meaningful detail and is persuasive. He received bad and wrongful advice; and, however difficult it may have been to locate the particular person, the claimant should have checked with him before placing his signature on the card. But we accept that the claimant acted in accordance with the advice and that he was seeking redress for the neglected meal entitlements.

Third, on the opposite side of the coin, we find that the claimant gave an affirmative answer to the question -- separately asked both by the Clerk with whom the claimant had the telephone conversation and by the General Foreman who brought the charges against the claimant -- as to whether he (the Claimant) had worked on July 9. This part of the case is clearly of substantial adversity to the claimant. He should have come clean when expressly asked as to the authenticity of the wage claim. And, as already shown, we are by no means declaring the claimant free of all wrongdoing.

We grant that we have not come to our conclusion without hesitation. On balance, however, we believe that the claimant should not stand branded as the charges brand him and that the case is more soundly viewed as akin to the case recently decided in Third Division Award No. 22112.

In the light of our conclusion, we deem it unnecessary to comment either on the Organization's contention that the claimant did not receive a fair and impartial hearing or on its assertion that the Carrier was improperly influenced by an alleged threat by the claimant's father against the General Foreman who leveled the charges against the claimant.

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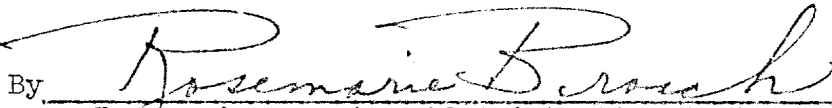
Award No. 7903
Docket No. 7591
2-CR-EW-'79

A W A R D

Claim sustained as and to the extent given in the 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 19th day of April, 1979.