

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { System Federation No. 42, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the terms of the controlling Agreement when they suspended Coach Cleaner C. K. Williams from service for thirty (30) consecutive days.
2. That the Seaboard Coast Line Railroad be ordered to compensate C. K. Williams for all time lost. That the time lost be credited to her for vacation purposes and all other benefits accruing to her position be restored.

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 suspended from service of the company for thirty (30) consecutive days following a formal investigation held December 1, 1976.

Claimant was charged with violating Safety Rule 17 for Mechanical Department employees, which states:

"Profane, indecent or abusive language is prohibited."

The Organization set forth in their submission the following two contentions:

- (1) Rule 17 is not a part of the Controlling Agreement of January 1, 1978 as subsequently amended since this rule was not one which was negotiated between the parties. The Organization thus maintains that the Carrier is attempting to amend or add rules to the Controlling Agreement.

- (2) The Claimant did not use profane, indecent, or abusive language in dealing with the Foreman.

The Board rejects contention number 1 set forth above on the well established grounds that rules promulgated by Carrier, unless they contravene the terms of the collective bargaining agreement, must be complied with by employees. This principle is clearly stated in Awards 5987 and 7161 respectively as follows:

"General Rules promulgated by Carrier, unless they contravene the terms of a collective bargaining agreement, are mandatory standards with which an employee agrees to comply, expressly or impliedly, in his employment contract. Failure to comply subjects him to disciplinary action."

and

"It is well established that a Carrier may promulgate rules for the conduct of employees that are not included in the Agreement."

Specifically, the Board does not find Rule 17 in any way contravening of the terms of the Controlling Collective Bargaining Agreement.

As to the second contention which goes to the heart of the issue in the instant case, that being whether or not Claimant did, in fact, use profane, indecent, or abusive language in the discourse between herself and her supervisor on the morning of November 23, 1976, the Board notes the the conflicting testimony in the record and further notes that the testimony of witnesses at the December 1, 1976 investigation fails to reconcile the differing versions of the surrounding events given by the Claimant C. K. Williams and her supervisor C. A. Weirick. Under such circumstances, the Board must adhere to the following long standing principles as they apply in discipline cases:

- (1) The Board sits as an appellate tribunal and is not in a position to resolve conflicts in evidence;
- (2) The Board is not in a position to substitute their judgment for that of the Carrier in matters of discipline; and as a corollary to point 2,
- (3) The Carrier has a right to rely on the observations of its supervisors in matters of discipline.

Therefore, concluding that Claimant had a fair and impartial hearing on December 1, 1976; that the disciplinary action imposed on the Claimant was neither arbitrary, capricious, discriminatory, nor excessive; and that the evidence from the record supports the finding of guilt; the Board upholds the thirty (30) day disciplinary suspension.

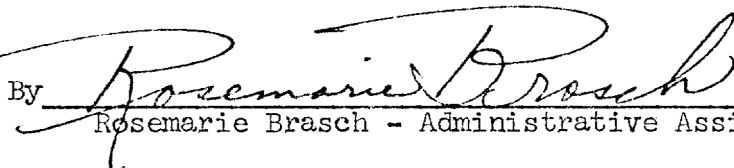
A W A R D

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 16th day of May, 1979.