

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 terms of the controlling agreement when they suspended Carman J. D. Nolen from service March 16, 1977 through April 14, 1977.
2. That the Seaboard Coast Line Railroad Company be ordered to pay the Claimant for all time lost, all overtime he would have made, insurance benefits, vacation rights he may have lost, and all other benefits he may have lost during the time he was suspended from 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 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.

Claimant was given a thirty day (30) disciplinary suspension following a formal hearing held on February 24, 1977, whereby it was determined Claimant had concealed facts and refused to cooperate with Company protection agents relative to a matter then currently under investigation.

The Organization contends that Claimant was not informed about the specific subject matter under investigation at any time during the interrogation for which Claimant was summoned to attend on January 26, 1977 and that such lack of information caused the Claimant to decline to answer some of the questions put to him without benefit of having legal counsel to advise him.

The Carrier contends Claimant was in violation in part of Mechanical Department Rules 1 and 12 of the Controlling Agreement and argues the evidence shows the Claimant did, in fact, conceal information and that thirty days is appropriate penalty.

Upon examination of the record, the Board concludes that while the interrogation of January 26, 1977 appears to have been conducted somewhat haphazardly and perhaps even clumsily, there exists sufficient evidence showing the Claimant was adequately informed about the subject matter under investigation and was given reasonable assurances that the questions posed to him at the interrogation were unrelated to a then pending civil action before a Federal District Court, initiated by the Claimant against the Carrier regarding a previous disciplinary action. The evidence also shows the Claimant declined to answer some of the questions asked and to this extent the Board concludes, the Claimant did, in fact, refuse to cooperate fully with the investigation. It is well established that the Carrier has a right to conduct interviews or pre-hearing interviews for the purpose of ascertaining matters relevant to its operation and employees are under an obligation to cooperate. (See Second Division Awards 549 and 4001).

The Organization maintains that Claimant would have been more cooperative at the interrogation had he been allowed either to have his legal counsel present at the interrogation or been allowed to consult legal counsel via the telephone. The Board notes there exists no contractual guarantee relative to the right of legal representation at such proceedings. The Board further notes that even if the Claimant had been question on matters pertaining to the issue or issues involved in the civil suit, that any problems of prejudice arising therefrom would have become a matter falling within the jurisdiction of the relevant court.

The Board recognizes the existence of certain extenuating circumstances which appear to have affected Claimant's conduct at the January 26, 1977 interrogation, namely, the still pending civil action Claimant had against the Carrier and the previous advice of Claimant's attorney not to answer any questions regarding the issues involved in said litigation. Though still no excuse for not fully cooperating with the interrogating officers, the Board further recognizes the strain Claimant must have experienced from apprehensiveness over whether or not responses to the questions asked him would in fact prejudice his legal case. Thus, under the circumstances and particularly in light of the fact Claimant did answer questions at the disciplinary hearing that were originally posed by the protection agents at the interrogation, the Board finds the disciplinary layoff of thirty (30) days to be excessive and therefore determines that such penalty appropriately be reduced to a fifteen (15) day suspension.

A W A R D


Claim sustained in part as per findings.

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Award No. 7925
Docket No. 7817
2-SCL-CM-'79

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.