

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

Parties to Dispute: { System Federation No. 99, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Firemen & Oilers)  
                          { Illinois Central Gulf Railroad

Dispute: Claim of Employees:

1. That Laborer Curtis J. Duffin was unjustly disciplined from February 17, 1977 to March 18, 1977.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to compensate Laborer Curtis J. Duffin for all time lost, and that all benefits be allowed for that period.

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, Curtis J. Duffin, was employed by the Carrier on January 2, 1975. After two formal investigations, the claimant was found by the Carrier to have been guilty of falsifying his time card on February 11, 1977, and of insubordination to Shop Superintendent - Car Department, E. M. Muehlenbein, on February 17, 1977. He was given a suspension from service from February 17, 1977 through March 18, 1977. The case has been duly processed on the property. It is now before this Board on appeal by the Organization.

The Organization concedes that the claimant did place a higher rate of pay, namely, \$7.16 on his time card on February 11, 1977, but argues that the claimant felt the work he was performing was a higher paying job and that the claimant felt further that he was entitled to the rate of \$7.16. The record shows that the claimant was assigned to perform work which entailed the digging of a ditch for a pipe that had a broken steam line. He had been assigned to this work previous to February 11, 1977, and had been paid the Laborer's rate for such work and had not made any complaints concerning the payment of that rate. At the investigation he testified that he placed the

higher rate instead of listing the rate of \$5.58 on his card "to see what would happen" because he thought it was a water pollution or maintenance job.

Rule 4 of the Superintendent's Bulletin of January 1, 1977, states, among other things, that making false reports or statements will be considered extremely serious offenses which will normally subject offenders to dismissal. On the basis of these facts, the Carrier's finding that the claimant was guilty of violating Rule 4 is supported abundantly by the record. 1/

As to the charge of insubordination, the record made at the investigation shows that on February 17, 1977, Superintendent Muehlenbein attempted to present the claimant with a notice of investigation concerning the February 11, 1977 falsification of his time card. Prior to that time, the Carrier had sent the claimant a letter containing the notice of investigation by certified mail. It appeared that the claimant had not informed the Carrier of an address change and the letter was returned to the Carrier. Consequently, Muehlenbein, on February 17, 1977, entered the company's truck shop where the claimant was working for the purpose of handing him the letter, which contained the notice of investigation. The claimant refused to accept the letter. Muehlenbein informed the claimant of the contents of the letter and stated that it was the claimant's obligation to receive the letter. The claimant left the truck shop to search for his union representative, and upon his return with the union representative about fifteen minutes later, Superintendent Muehlenbein informed the claimant that he was out of service.

There is a conflict between the testimony of Muehlenbein at the hearing and that of the claimant as to whether when Muehlenbein attempted to hand the claimant the letter there was a request for union representation at that time. According to Muehlenbein, the claimant simply refused to accept the letter. The claimant, on the other hand, alleges that he asked for a union representative and was told that one was not necessary. The hearing officer found that Muehlenbein's version was correct and the record amply supports the Carrier's finding that the claimant was insubordinate. Insubordination would be present even if the claimant's version of what took place were to be accepted. All that Muehlenbein sought was to hand the letter to the claimant in order to give him notice, and there would appear to be no necessity for having a union official present on that occasion.

The Board also holds that the discipline assessed against the claimant was warranted. This Board has often held that acts of dishonesty, such as falsifying time cards, warrants stringent discipline. Second Division Award 1756 (Referee Carter), Second Division Award 5960 (Referee Gilden). The Board has also considered insubordination as a serious offense. For a case in which the seriousness of insubordination as an offense in the railroad industry is discussed, see Public Law Board No. 1944, Award No. 1, Brotherhood

1/ As a reasonable rule of conduct not in conflict with the Agreement, contrary to the Organization's contention, the rule may be enforced.

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of Railroad Signalmen and Southern Railway System (Referee Van Wart). There was ample credible evidence to support the Carrier's conclusions and the Board finds that the discipline imposed was reasonable.

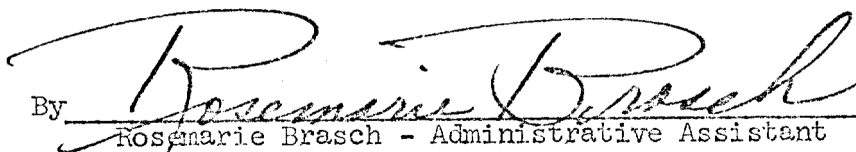
A W A R D

The claim is 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 20th day of June, 1979.