

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

Parties to Dispute: (System Federation No. 105, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Portland Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Portland Terminal Railroad Company unjustly dealt with Carman R. T. Rowe, Portland, Oregon, when he was improperly withheld from service for three (3) days, October 29, October 30 and October 31, 1977, without benefit of a hearing in violation of Rule 37 of the controlling Agreement.
2. That accordingly, the Portland Terminal Railroad Company be ordered to compensate Carman R. T. Rowe in the amount of eight (8) hours' pay at pro rata rate for each of the three (3) days he was improperly withheld 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.

This dispute involves a Claimant who was withheld from service for three days pending submission of a satisfactorily completed Carman examination.

The Organization contends that Carrier, by its actions, violated Rule 37 of the controlling agreement, since Claimant was withheld from service without benefit of a fair hearing.

Carrier contends that Claimant was not disciplined, but was withheld from service because of his voluntary election not to comply with instructions and complete a satisfactory examination in a timely manner. To comply with FRA regulation, Carrier requires its Carmen to pass satisfactorily a written examination as evidence of their understanding of inspection and repair. On July 27, 1976, a notice of examination with an attached examination was sent to each Carman. All Carmen, save Claimant, satisfactorily

complied and completed this examination in what Carrier considered to be a timely fashion. Carrier established 75 percent as the required passing grade and so indicated on the cover sheet of the examination. Having not received a completed examination from Claimant, Carrier sent the following letter:

"Portland, Oregon
October 11, 1977
File PR

R. T. Rowe
Carman

To date, you have received three sets of carman examination papers which were not completed and returned. Please advise promptly why you have not completed this written examination as per Federal Requirements outlined in my letter accompanying the examinations.

If this written examination is not completed and returned to this office promptly, it will result in appropriate disciplining action.

/s/ M. J. Wood
Mechanical Supervisor"

In response to this letter, Claimant explained in a letter dated October 13, 1977, that he had only received two sets of examination papers, that he had long ago completed one that was taken from his locker, and that he had just recently found the second test, which had been partially completed but misplaced. He also forwarded a completed test to Mr. Wood at this time.

After a review of this completed test, Supervisor Wood sent the following letter to Claimant:

"Portland, Oregon
October 17, 1977
File PR

Mr. Rex Rowe - Carman
Guilds Lake Yard

I am issuing you another carman's examination as the one you returned to me, in response to my letter dated October 11, 1977, is unsatisfactory. Some of the answers demonstrate your lack of fundamental knowledge and you will be given ten days upon receipt of this letter to satisfactorily complete the examination and return it to this office. If the examination is not satisfactorily completed at this time, you will be removed from service until it is.

/s/ M. J. Wood
Mechanical Supervisor"

Claimant responded as follows:

"October 31, 1977

Mr. M. J. Wood

In response to your letter dated October 17, 1977, you stated my examination was unsatisfactory. You gave me another to do again. Now I know the first test had a passing grade of over 75%. Then you gave me 10 days to complete another or be out of service until completed.

Accordingly, I am depositing my second test in your office as of this date. I assume you will notify me if it is satisfactory to you so I can return to service per your instructions dated October 17, 1977. As of last night I completed this other test, however, it did take 13 days to complete. I sincerely hope this one meets your personal approval since 75% did not seem to mean anything in my personal case.

Also, in your letter you stated some of my answers demonstrate my lack of fundamental knowledge. I take exception to this, as I see it that is your personal opinion.

Finally you seem to want the carman to read the books, Rules, etc. Then when they do their jobs right you call half their bad orders Chicken Shit. (Your words not mine).

/s/ Rex Rowe"

Claimant was restored to service November 1, 1977, upon receipt of the completed test. He was held out of service October 29, 30, and 31 for failure to deposit his completed test within the ten days specified in Supervisor Wood's letter of October 17, 1977.

In the present case, we have an employee who, for some reason not apparent to this Board, resented having to complete the Carman's examination as required by Carrier. He procrastinated and gave flip answers. He, however, did answer more than 75 of the 100 questions on his first submission correctly, in spite of the tone of his response. A review of Carrier Exhibit A test submitted by Claimant on October 13, 1977, reveals 78 out of 100 questions were not challenged by Carrier as being wrong or flip. By its own standards, Carrier established 75 percent as a passing grade. Claimant's first test met those requirements. We further see no indication in the record before us that the Carrier at any time asserted that Claimant did not achieve the 75 percent grade required.

The actions taken by Carrier in this instance are disciplinary in nature and clearly fall within the scope of Rule 37 of the agreement.

Supervisor Wood threatened discipline in his October 11 letter. He specified a penalty for noncompliance in his October 17 letter. "If the examination is not satisfactorily completed at this time, you will be removed from service until it is." Claimant was ultimately withheld from service for three days. Carrier threatened discipline and then specified a penalty. It ultimately carried out that threat. In spite of Carrier's assertion that Claimant brought this penalty on himself and that its actions were not disciplinary, we cannot support Carrier's position on this issue.

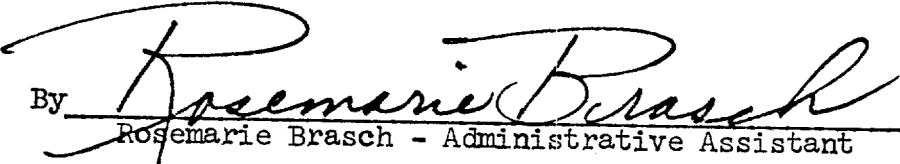
A W A R D

Claim sustained.

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 29th day of August, 1979.