

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

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

Dispute: Claim of Employees:

1. That under the current Agreement, electrician D. A. Taylor was unjustly suspended from the service of the National Railroad Passenger Corporation (Amtrak).
2. That, accordingly, National Railroad Passenger Corporation be ordered to rescind the forty (40) days suspension and make whole for all wages lost on account of suspension.

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 suspended for unauthorized absence from duty. This scheduled tour of duty was from 4:00 PM to 12 Midnight.

At about 7:30 PM on the night in question, Claimant's Foreman requested him to blow the condenser, but was told by Claimant that he was going out for a fish fry. The Foreman instructed him that "no one was to leave the property".

Shortly thereafter, the Foreman returned to the scene to request Claimant to assist another employee who was working on a compressor, but was unable to locate Claimant. The Foreman testified that the job assigned Claimant, to blow the condenser, was not done at the time.

At about 8:30 PM, the Foreman observed Claimant walking by his office and asked him to explain his whereabouts. Claimant stated that he had been looking for a mask to blow out the condenser at the Electric Shop. The Foreman testified that he had gone to the Electric Shop, among other

locations, when trying to find Claimant; that Claimant used obscene language during the conversation between them; and that Claimant stated that he could not leave the property because he did not have a car. On this last point the Foreman stated that in the company of another employee, they found Claimant's car "underneath the concourse". This location was subsequently identified as "underneath a bridge on Curtiss Street".

The employee, whose request for assistance prompted the Foreman's search for Claimant, testified that he saw Claimant driving away shortly after he had requested the Foreman for assistance. He added that the Foreman asked him to accompany him to look for Claimant's car at its usual parking place, but it was not there.

Claimant denied leaving the property. He asserted that he was looking for a mask until about 8:30 PM but that he then proceeded to blow the condenser without the mask "because there was not one available for me". His Foreman testified, however, that Claimant had been issued a mask; that Claimant did not let him know between 7:30 and 8:30 PM, that he could not find or locate his mask; and that there were other masks available, stating: "We have masks here in the office".

The record discloses conflicting testimony on the factual issues which present questions of the credibility of witnesses and the weight to be given their testimony. It is not our function to pass upon the credibility of witnesses or determine the truth of conflicting testimony or evidence. The credibility of witnesses and the weight to be given their testimony is for the trier of facts to determine. We will not disturb discipline case findings that are supported by credible, though controverted, evidence. There is substantial evidence in the record that supports the charges made. We will not substitute our judgment for that of the Carrier's and will, therefore, deny the claim.

Petitioner asserts procedural deficiency, stating that although "the investigation has been conducted in a fair manner ... There is a question of impartiality of the Hearing Officer". We perceive no basis in the record before us to substantiate a charge of prejudicial conduct on the part of the Hearing Officer. Any possible procedural error was not prejudicial to Claimant and not fatal to the outcome of this case.

A W A R D

Claim denied.

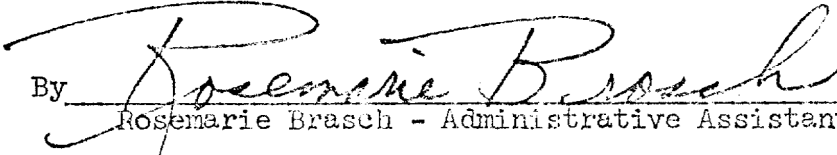
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Award No. 8086  
Docket No. 7930  
2-NRPC-EW-'79

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 12th day of September, 1979.