

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 8168  
Docket No. 7997  
2-CR-CM-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 109, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Consolidated Rail Corporation

Dispute: Claim of Employee:

- (a) That the Carrier violated the controlling agreement when on May 20, 1977, it assessed 10 days actual suspension May 23, 24, 25, 26, 27, 30, 31, June 1, 2, 3, 1977, to Car Repairer Robert Kosmisky, ConRail Repair Facility, Reading, Pennsylvania, as a result of a hearing and investigation conducted on May 5, 1977.
- (b) That accordingly the Carrier be ordered to compensate Car Repairer Robert Kosmisky the 10 days actual suspension and Memorial Day as well as any other compensation the Claimant would have earned during the 10 day period he was serving his discipline; and further that the Carrier remove all record of this discipline and that Claimant's service record be restored, unimpaired.

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.

Following an investigative hearing conducted in a fair and proper manner, the Claimant was assessed a ten-day disciplinary suspension for his conduct on April 7, 11, 12, 13, and 14, 1977. The offenses of which he was charged include the following:

April 7 -- Being absent from his assigned work and then stating to his foreman that he chose not "to over-work this particular day" as "this was a holiday".

April 14 -- Insubordination to his foreman in refusing to carry out a work order except under conditions he specified; and being absent from his assigned work at both the beginning and end of the work day.

April 11, 12, 13, and 14 -- Failing to accomplish the amount of work which the Carrier considers adequate.

An examination of the record leaves no reason for the Board to question the Carrier's finding that the Claimant was guilty of the charges.

In the notice for the hearing, the Claimant was charged with violation of Rule 1 (Hours of Service), Section 1, and Rules 2, 4, 5, and 7 of the Safety Rules Book.

Rule 4, referring to "undivided attention to duty"; Rule 5, making insubordination subject to discipline and possible discharge; and Rule 7, requiring exclusive attendance to duties during prescribed hours, provide sufficient grounding on which to base the Carrier's charges. The Claimant was fully aware of the conduct of which he was accused prior to and during the investigative hearing. The penalty involved is by no means excessive.

Rule 1 deals with hours of service and is hardly intended, standing by itself, as a disciplinary rule. While the Organization makes this argument with some merit, this does not excuse the Claimant's conduct itself and is not of significant importance in view of the Carrier's reference to directly relevant safety rules.

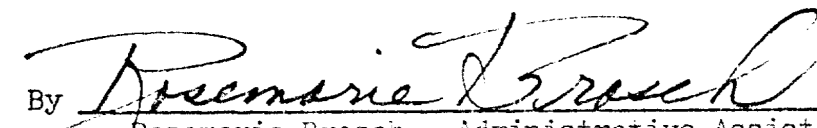
A W A R D

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 14th day of November, 1979.