

Parties to Dispute: { System Federation No. 6, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{
{ Chicago, Rock Island and Pacific Railroad Company

- (1) That under the terms of the applicable Agreement the Carrier unjustly suspended Carman L. H. Jones for 60 days.
- (2) That accordingly, the Carrier be ordered to compensate Carman L. H. Jones for all of his work days in the 60 days of suspension.

Claimant has denied that he received a clear order to buckle up the cars on Track 18. Although he admitted to a conversation with the yardmaster concerning work on Track 18, he denies that there was a clear order to perform such work. The Claimant contends that his conversation with the yardmaster was to engage in the work on a TP drag prior to performing the work on Track 18. Claimant contends that since the work on the TP drag was not available, he was waiting for further instructions before proceeding to the work on Track 18.

Rather, Claimant contends that the proceedings at the hearing were not proper because the notice mentioned his failure to perform the work on Track 18 at 1:45 p.m. He correctly notes that both he and the other carmen were continuing to work on Train 20 through approximately 2:00 p.m. He argues that the erroneous time specified in the charge and in the disciplinary notice is sufficient to void the suspension.

The Carrier argues that the Board functions in an appellate capacity and it cannot resolve credibility issues presented by the testimony. The Carrier argues that many prior decisions have upheld the imposition of discipline where there is substantial evidence in the record to justify the finding of guilt.

It is clear from the transcript that the Claimant did engage in a discussion concerning the work on Track 18. The Claimant admits such conversation, but justifies his failure to perform such work on the basis of unclear instructions. Such a contention cannot be accepted.

The decisions of this Board have clearly recognized the appellate nature of the Board's work. Thus, it was stated in Award No. 7325 as follows:

"Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion."

Based upon the record in this case, the Board cannot find that the Carrier acted in either a capricious or arbitrary fashion when it issued the disciplinary action to the Claimant. It is the conclusion of this Board that there was substantial evidence presented at the hearing to justify the Carrier's finding and its issuance of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

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Award No. 8201
Docket No. 8021
2-CRI&P-CM-'79

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of December, 1979.