

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the current agreement, particularly Rule 35, when on August 17, 1977 Electrician Donald L. Cramer was improperly dismissed from service at Springfield, Missouri.
2. That the St. Louis-San Francisco Railway Company further violated the agreement when Electrician Donald L. Cramer was not afforded a fair and impartial hearing in accord with Rule 35.
3. That Electrician Donald L. Cramer be made whole because of the improper action, to be reinstated to service with his seniority rights unimpaired, paid for all loss of wages, insurance, Railroad Retirement, vacation and any other loss of rights or benefits.
4. That Donald L. Cramer be compensated for a four (4) hour call for time required by Carrier to attend the investigation on August 16, 1977.

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 were given due notice of hearing thereon.

This is a claim based on the alleged improper dismissal of claimant from the service of the carrier. Claimant was charged with a violation of Rule 70 of the Rules and Regulations of the Carrier.

"70. If physically able, an employee injured on duty must report the injury to his foreman or other supervisory officer before leaving company premises. A report must be made of every injury regardless of how slight. The supervisory officer should arrange prompt first aid of the injured person, then place him under care of division or local surgeon as soon

"as possible, reporting the injury promptly on prescribed forms regardless of how minor it may appear."

Pursuant to proper notice and investigation, claimant was found guilty of failure to notify the carrier of the injury as required by the aforementioned rule.

The facts of the case are as follows:

Claimant injured his wrist during his tour of duty on June 21, 1977. The claimant mentioned the occurrence to his foreman, but did not comply with the company procedure for reporting accidents. On August 5, 1977, the Claimant filled out the proper injury report on his own initiative.

Claimant, himself, asked for a Referee Hearing, which request was granted. At said hearing, the claimant proffered new evidence, including a transcript of the proceedings before the hearing officer on the property, which Claimant stated he trascribed through a concealed tape recorder, and which transcript was different from the one included in the submissions to the Board. Consistent with long stated and firm case law and Circular No. 1, the Board has ruled that new evidence was not acceptable at the Board level. The Board must therefore confine itself to the record before it supported by the hearing arguments. While the proffered evidence may possibly have altered the Board's decision, the fact that it was barred compels us to restate the conclusion of the Board set out in the award first adopted on February 21, 1979, to-wit:

"The failure to follow up a procedure in reporting the injury was an infraction of the rule. The penalty of dismissal is, however, too severe taking into consideration the nature of the offense and the particular circumstances of his case. Appropriate discipline would have been a lengthy suspension. Accordingly, we order that the claimant be reinstated without compensation for time lost."

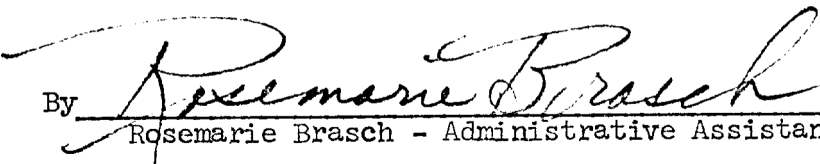
A W A R D

Claim sustained in accordance with the Findings.

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 February, 1980.