

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. 7, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Carmen)  
                          { Soo Line Railroad Company.

Dispute: Claim of Employees:

Carman Karl Laszewski, Stevens Point, Wis., is claiming to have (letter or reprimand) removed from his personal file, which he received from Mr. D. G. Foote, Manager of L. & C. Services, in regard to investigation of Nov. 11, 1977, which the Soo Line R.R. charged employee, "It appears you made no effort to notify your gangleader or anyone else in authority that you were leaving." Mr. K. Laszewski claims that the Soo Line R.R. failed to show Burden of Proof of charge. Rule 31 & 32 Shop Craft Agreement should be controlling.

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.

Claimant was subject to an investigative hearing, which was conducted in a fair and proper manner, on the following charge:

"To determine facts relative to your walking off the job on your assignment, the 11:30 p.m. to 7:30 a.m. shift in Stevens Point yard about 2:00 a.m. on the morning of November 3, 1977. It appears you made no effort to notify your gang leader or anyone else in authority that you were leaving. Your leaving your job did result in delay's even though we had called an extra man out on penalty time the beginning of the shift."

Following this disciplinary hearing, the Carrier issued a letter with "reference to the investigation" stating specifically, "It appears you made no effort to notify your gang leader or anyone else in authority that you were leaving."

During the course of the dispute handling on the property, the Carrier's Director of Labor Relations wrote to the Organization in part as follows:

"Intensive review of the letter of reprimand did find a single sentence which might be deemed not fully accurate. That sentence is: 'It appears you made no effort to notify your gang leader or anyone else in authority that you were leaving.' In an effort to resolve this dispute, the Carrier has offered to strike from the record that sentence. The Employees stated that they would take this offer under consideration."

The Organization declined this offer, which would have left intact the letter of reprimand resulting from the investigation.

The Board finds no objection whatsoever to the Carrier's contention that it may initiate letters reminding employees of applicable rules and regulations concerning employee conduct, and, in particular, marking off duty. On this basis, argues the Carrier, there is no basis on which to disturb the Claimant's record now containing both the record of investigation and the subsequent reprimand letter.

There is, however, more involved here. The Carrier did not simply communicate with the Claimant to remind him of the necessary conformance to rules and regulations. (See Award No. 8062 (Dennis) on this point). Instead, it initiated an investigative hearing under the disciplinary procedure, thus setting in motion the possibility (if the charge is proven) of a resulting formal disciplinary action.

An examination of the investigative hearing records show that at the core of the matter was the Claimant's alleged failure to notify proper authorities in connection with his leaving work. At first, the Carrier, through its initial letter of reprimand, found this charge to be sustained. At a later point, however, the Director of Labor Relations found otherwise.

Thus, the Board is not dealing with a communication from the Carrier to one of its employees, but with the results of a formal investigation. Carrier considered such results as "discipline", as stated in the Carrier's correspondence on the property and in its submission to the Board, as follows:

"The purpose of holding an investigation is to determine the facts. Rather than seeing discipline as punitive, we consider the purpose of discipline to be corrective." (Emphasis added)

"The facts", as later determined, failed to show that the principal charge was "fully accurate". It follows therefore that the results of the investigation shows a failure to prove the charge, and the Carrier should act accordingly.

Had the Carrier simply communicated to the employee to warn him concerning rule compliance, the result would be different. But once the disciplinary process is initiated under the Agreement, it must be followed to its logical conclusion.

Form 1  
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Award No. 8265  
Docket No. 8202  
2-S00-CM-'80


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 5th day of March, 1980.