

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

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

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended Carman Abraham Lincoln Clark, Springfield, Missouri, from service on June 8, 1978, and subsequently dismissed him following an investigation conducted on June 15, 1978, in violation of the controlling agreement.
2. That the Carrier denied full representation in that only the Local Chairman was allowed in the investigation, excluding the Vice Local Chairman and the Secretary of the Local Board.
3. That Carman Abraham Lincoln Clark be restored to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all time lost plus six percent (6%) annual interest and reimbursed for all loss sustained account of loss of coverage under health and welfare and life insurance during the time unjustly and unfairly held out of service.

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, a carman for seven and one half years, was suspended June 8, 1978 and subsequently dismissed from service following an investigation held June 15, 1978. He was charged with two counts of insubordination, and violation of Rule B of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Employes MP-1 Standard, Effective March 1, 1957, which reads in pertinent part as follows: "Employes who are ... insubordinate ... will not be retained in the service."

The claim before this Board is twofold. The Organization asserts that the suspension and dismissal were in violation of the controlling agreement and that the Carrier denied the Claimant full representation in that only the Local Chairman was allowed in the investigation, while the Vice Local Chairman and the Secretary of the Local Board were excluded. The Carrier contends that the dismissal was warranted in view of Claimant's refusal to follow the orders of Carrier officers on two separate occasions. The Carrier also contends that the controlling agreement requires that only one Organization representative be present at an investigation.

The incidents giving rise to Claimant's alleged insubordination occurred on the morning of June 8, 1978, when, upon arriving for the 7:30 a.m. to 4:00 p.m. shift, Claimant was told to report to the Shop Superintendent's Office. At approximately 8:00 a.m. Claimant found the Superintendent in his office and the Superintendent told Claimant that he wished to discuss Claimant's safety record. Claimant had sustained a personal injury on the previous day and this was the fourth personal injury that he had reported in the previous three months. In the seven and one half years of Claimant's service he had reported eleven injuries. All of these injuries were minor and Claimant had not lost any time from work due to them. It should also be noted that Claimant's personnel record is clear of any charges of insubordination.

During the course of the discussion Claimant, believing that his personnel record was being reviewed, requested that an Organization representative be permitted to be present. The Superintendent told Claimant that it was not a disciplinary matter and that he did not need to be represented merely for a discussion of safety and how to avoid personal injuries. Claimant refused to continue the discussion and, as he was walking out of the office, was told by the Superintendent that, "before you walk through the door you should consider the rule on insubordination". Claimant left the office and reported to his work area.

The second and related incident of alleged insubordination occurred at 11:30 a.m., approximately three hours after Claimant left the Superintendent's office. Claimant was approached by his shop foreman and told to sign for the receipt of an envelope containing two letters. Not knowing what the letters were, Claimant refused to sign for them without an Organization representative present. The foreman then told him that he had to sign for the letters, that they were his release from service and notification of investigation. Claimant persisted in his refusal to sign and the foreman left to consult the Superintendent. The Superintendent told the foreman to allow Claimant to call for his representative.

The foreman then accompanied Claimant to a phone in the Air Brake Shop. After Claimant called his representative, the foreman told him to remain in the Air Brake Shop. Claimant did not remain in the shop, as instructed by his foreman, constituted insubordination.

Testimony regarding the demeanor of the parties involved in both incidents of alleged insubordination is inconsistent. Claimant testified that, during the discussion with the Superintendent, the Superintendent was hot-headed, irrational and irresponsible. The Organization maintained that the Superintendent wanted to

make an example of Claimant. The Superintendent, on the other hand, testified that he was surprised rather than angry at Claimant's refusal to discuss his safety record without an Organization representative present.

Neither party is blameless. Both demonstrated a quarrelsome attitude. The whole affair might have been avoided but for a conflict of personalities.

A personality conflict is not, however, reasonable grounds for suspension or dismissal. The actions of the Superintendent, on the morning of June 8, 1978, were arbitrary and responsible for provoking the Claimant. Also, Claimant's failure to remain in the Air Brake Shop was not grounds for dismissal. Claimant had just been told that he had been released from service and he was understandably upset. He left the shop for only a few minutes and returned after he had gathered his personal belongings. It must be remembered that this second incident would not have occurred if the Superintendent had not acted so rashly earlier that morning.

The remaining question is whether the Carrier denied full representation by refusing to allow more than one Organization representative in the investigation. The Carrier points to language in the agreement which provides for a representative (in the singular) to assist charged employees in processing claims and grievances.

Rule 34, Time Claims and Grievances, provides in pertinent part that:

"Should any employe ... believe he has been unjustly dealt with ... the case, subject to the approval of the duly authorized local committee, shall be taken to the Foreman ... by the duly authorized local committee or their representative." (emphasis added)

Rule 35, Discipline, provides in pertinent part that:

"... At a reasonable time prior to the hearing, such (suspended) employe and his duly authorized representative will be apprised in writing of the precise charge. ..." (emphasis added)

The Carrier argues that the use of the singular form of representation in the above agreement language provides a sufficient basis for it to prohibit multiple representation at an investigation. The Board does not agree.

Importantly, the parties had established a practice whereby charged employees were permitted multiple representation at investigations. This practice was stopped approximately two years ago. In view of the ambiguity of both, the agreement language and the past practice of the parties, the Carrier would have been well advised to allow the Vice Local Chairman and the Secretary of the Local Board to sit in at the investigation.

Given all the foregoing, we must conclude that the Superintendent's aggravating and quarrelsome conduct, and the most apparent personality conflict with Claimant, was the proximate cause of the entire incident. We are holding that management cannot aggravate an individual into insubordination and then properly discharge him for it. Had the matter been handled in a civilized manner by the superintendent

and the claimant's behavior been abusive and in disregard for management authority, we may well have reached a different conclusion. But, based on the facts and evidence of this record, we have no alternative but than to sustain the claim.

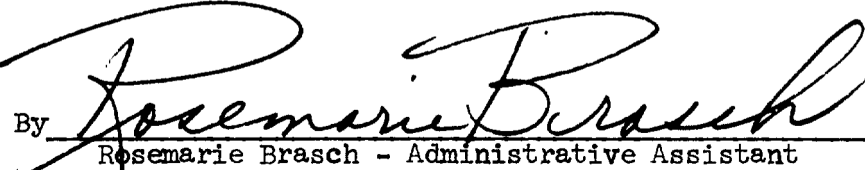
A W A R D

In accordance to Rule 35 (a) of the Agreement, Claimant is to be reinstated with his seniority rights unimpaired and compensated for wage loss, if any, less amounts earned in other employment.

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 26th day of March, 1980.