

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Norfolk and Western Railway Company

Dispute: Claim of Employee:

1. That the Norfolk and Western Railway Company unjustly assessed Carman Alan L. Young a thirty (30) days actual suspension, as a result of investigation held September 8, 1977, at Chicago, Illinois.
2. That the Norfolk and Western Railway Company remove the thirty (30) days actual suspension from the service record of Carman Alan L. Young, make him whole for all wages lost, vacation and seniority rights, on account of the unjust thirty (30) days actual suspension.

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, Carman Alan L. Young, was employed by the carrier for a period of 3 1/2 years in the Carrier's transportation yard at Chicago, Illinois as of August, 1977. An incident occurred in the yard involving claimant on August 24, 1977 at 10:20 a.m. The Carrier notified the claimant immediately that a formal investigation would be held to determine if the claimant had (1) improperly performed his duties and (2) acted belligerently toward his supervisor when confronted with the improper performance. The investigation was duly held on September 8, 1977 after a postponement from August 26, 1977. By letter dated September 14, 1977, the Carrier notified the claimant that he was suspended for thirty days for both improper performance of duty and for belligerence to a supervisor.

Both charges arise out of the same incident. The carrier contends that claimant failed to service journal box R-2 on Car M&STL 53532 and, when confronted with this failure, he became enraged and acted belligerently toward his supervisor. The union asserts that the formal investigation was marked with procedural irregularities, that the evidence does not support the charge of improper

performance and, as to the second charge, the claimant was provoked by a supervisor who allegedly threatened the claimant with a journal box hook.

While the investigation does contain some minor procedural irregularities, this Board finds that none of these insignificant errors operated to the prejudice of the claimant. He had ample opportunity to present his case and even the transcription errors in the record are so trivial that this Board can fully comprehend the testimony of the witnesses.

There are no conflicts in the record regarding the failure of the claimant to fill the journal box with oil. His sole defense is that he inadvertently passed up this particular journal box to assist his partner and intended to go back and fill it up later. There is conflicting testimony on the question of whether or not the claimant said he had serviced all cars. The claimant testified he told his supervisor, he was finished except for journal box R-2 on Car M&STL 53532. Bound by a long, entrenched line of precedent, this Board is prohibited from resolving the credibility of the grievant versus his supervisor. Second Division Awards 7955 (Weiss) and 7973 (Larney). Here, there was substantial evidence in the record showing that the claimant improperly failed to service the journal box. Second Division Award No. 6489 (Bergman). Some disciplinary action is warranted for the claimant's failure to service the box due to the possible serious damage to railroad property.

The belligerency charge also presents disputed issues of fact. Reading the record as a whole, we conclude that both the foreman and the claimant are jointly responsible for the hostile exchange. While the claimant clearly used some vulgar language, he could have been provoked by the tension and heat of the situation. Under the circumstances, the carrier's penalty was excessive. In Second Division Award No. 6639 (Lieberman), which presented similar facts, this Board ruled:

"It is clear from the record that Claimant had been provoked by Foreman's words and lost his temper; he clearly over-reacted to this provocation, using ill chosen language and also taking the foreman up on his implicit injunction to either work or go home, by punching out. While this action cannot be condoned, neither can the intemperate language used by the foreman. This Board has long recognized the prevalence of 'shop talk' in the industry, but also must take into consideration the fundamental responsibility of supervision not to be abusive to subordinates at any time, and particularly when giving any instructions."

In this case, the supervisor and the claimant must share the blame for the confrontation on August 24, 1977. We shall, therefore, reduce the suspension from thirty days to fifteen days.

A W A R D

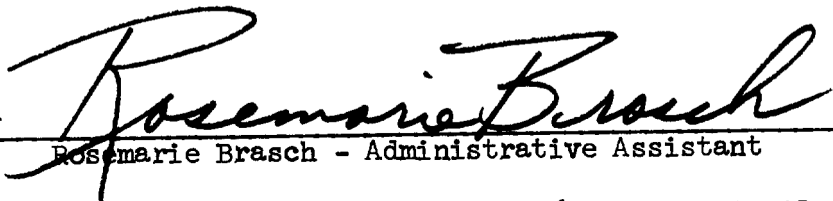
Claimant's suspension is reduced from thirty days to fifteen days and he shall be compensated for wages lost during the fifteen days.

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Award No. 8332
Docket No. 8211
2-N&W-CM-'80

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 16th day of April, 1980.