

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Boilermakers)
(
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That Boilermaker David Brandenburg was improperly assessed a five (5), day record suspension.
2. That accordingly the carrier be ordered to remove any mark placed upon Mr. Brandenburgs record as a result of these charges.

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.

The hearing officer has considerable discretion in the conduct of the investigation, and the calling of witnesses. He must, however, have good reason for denying a witness for a claimant. In this case, sufficient reason for denial seemed very slim. In addition, the hearing officer throughout the hearing used language that clearly indicated unwarranted pre-judgment. In spite of all this, I believe the bulk of the facts came out.

It is common practice to stray from an immediate work-site on the railroad. It is often impossible to even determine specific job-sites. If the worker is not off the property, or clearly "hiding out", this accusation is seldom made. It is not proven in this case.

No evidence of marijuana was ever produced at the hearing. We have the testimony of non-experts that is certainly not compelling.

We, therefore, find for the claimant - sustained. His record should be cleansed.

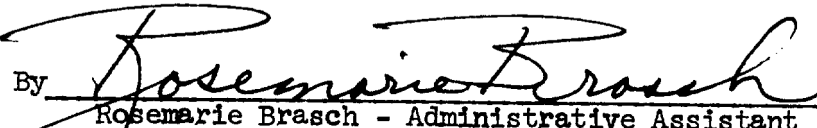
A W A R D

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 21st day of May, 1980.