

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

Parties to Dispute: { System Federation No. 106, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement, Car Repairman Secbrue Cambrel was unjustly dealt with when he was suspended from the service of the Company for seven calendar days from November 8, 1977 thru November 14, 1977. Which is in violation of rule 29 of the agreement.
2. That the Washington Terminal Co. be ordered to reimburse Mr. Cambrel for his net wage loss due to this unjust penalty and his record be cleared of this charge.

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.

Car Repairman Secbrue Cambrel, Claimant, was suspended by Carrier from service for seven (7) calendar days as a result of allegedly violating General Rules "E" and "N" of the Company. Rule E states "employees must devote themselves exclusively to the Company's service while on duty". Rule N provides that, "participating in any unauthorized or unnecessary activity while on Company property is prohibited".

On October 4, 1977, Claimant was duly notified by letter to appear at a hearing on October 11, 1977, prepared to answer charges of violation of Company General Rules E and N.

It seems that at approximately 10 p.m. on the night of September 29, 1977, Claimant was observed watching television in the storeroom office in the J. C. Smith Building, Coach Yard. At the October 11th hearing, Claimant's time card was produced which indicated, in fact, that he was officially off duty at 10 p.m. on the night in question. At this point, Carrier asked for a recess (to which Claimant agreed) so that Claimant's foreman, the signer of the time card, could be called to give testimony.

With proper notice, the hearing was reconvened on October 20th. Assistant Foreman Louers, signer of the time card, testified that Claimant came to him at about 10:25 p.m. and requested to mark-off at 10 p.m. Louers further stated that at 10:25 p.m., he was aware that Claimant had been seen watching television shortly after 10 p.m. He denied any conversation, prior to 10:25 p.m., concerning Claimant's intentions to leave early that night.

Claimant testified that he told Louers in the afternoon of September 29th that he wanted to leave early that night. He stated that he finished work on his last train shortly before 10 p.m. and that he went to the storeroom to get new lamp batteries for his next days' work, before going to mark-off. When Claimant went to the storeroom, he found the television on. He claims he did not turn it on, and that he did not sit down and watch it. According to Claimant, it was while he was getting supplies that he was observed standing in the doorway facing the television.

Carrier testimony verified that Claimant was standing in the doorway of the storeroom when he was observed by the Assistant to the Manager, H. Tillman.

Following the hearing, on October 31, 1977, Carrier sent Claimant a letter stating that he was adjudged to be guilty as charged and that as a result was being given a seven (7) day suspension from service.

During the appeal process, Carrier put forth an additional charge: that the mark-off time of 10 p.m., requested at 10:25 p.m., was an attempt on the part of Claimant to "maneuver or scheme out of the situation", by showing a false quitting time, once he had knowledge of having been observed watching television.

There does appear to be substantial evidence on the record to sustain the finding that Claimant was indeed watching television on Company property before check-out in violation of General Rule N.

However, whether Claimant tried to "maneuver or scheme out of the situation" by documenting a false quitting time we do not know, partly because this charge was belatedly and inappropriately made by Carrier. Moreover, it should be noted that Claimant is a thirty (30) year employee with an unblemished record for the past fourteen (14) years.

Thus, in the opinion of the Board, the discipline of a seven (7) calendar suspension seems somewhat excessive; Carrier is hereby directed to reduce the seven (7) day suspension to three and one-half ($3\frac{1}{2}$) days and recompense Claimant accordingly.

A W A R D

Claim sustained in part, and denied in part, as per findings.

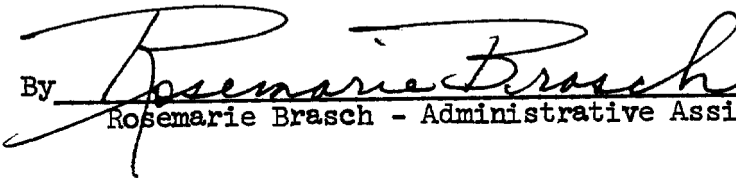
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Award No. 8376
Docket No. 8034
2-WT-CM-'80

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 11th day of June, 1980.