

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. 1, Railway Employees'
Department, A. F. of L. - C. I. O.
(Blacksmiths)
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That nothing more than a minor disagreement was involved in this incident.
2. That accordingly the Consolidated Rail Corporation be ordered to compensate Blacksmith V. J. Consalvo for all lost wages and strike these charges from his record.

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 blacksmith welder at the carrier's Altoona Locomotive Shop, was charged with failure to cooperate with a fellow employe during performance of his duties, conduct unbecoming to an employe and disrupting shop operation by quarreling with a fellow employe. After a trial held on May 17, 1978, the carrier assessed discipline consisting of a 90 day suspension. After an appeal of the discipline, the carrier exercised leniency and reduced the suspension to ten days on September 29, 1978.

The organization argues that the altercation was minor and did not disrupt shop operations so that no discipline is necessary.

The carrier asserts that the claim contains a procedural defect. According to the carrier, the claim appealed is a 100 day suspension instead of ten days and since the 100 days suspension was not appealed on the property, this Board is powerless to adjudicate the claim. Assuming that there is no procedural defect, the carrier urges us to deny the claim because the claimant has constantly fought with one of his fellow employes.

Claimant has been employed by the carrier since 1937. On April 28, 1978, claimant engaged in a loud exchange of words with a fellow employe. No fighting occurred. The heated conversation concerned which of the two employes would take a frame up to the furnace. Claimant had volunteered to perform the work, but the other employe objected. After he appeared at the scene of the conversation, the foreman directed the claimant to carry the frame.

The record discloses no procedural defect. It is clear that the organization is appealing the claimants' suspension imposed by the carrier after the May 17, 1978 hearing. This suspension, reduced from ninety days to ten days, is the discipline referred to in the joint submission. The "100 days" was originally referred to in the carrier's letter of September 27, 1978. The reference to "100 days" was inadvertently carried over in the organization's March 21, 1979 notice to this Board. Though the record is unclear, it seems that the claimant was previously given a 90 day suspension. Thus, the organization was alluding to the aggregate number of suspension days imposed on the claimant. While this is clearly not a fatal flaw, this Board, in this claim, only has jurisdiction to adjudicate the ten day suspension which arose out of the events on April 28, 1978.


The carrier has the burden of proffering substantial evidence that the claimant is guilty of the charges assessed against him. Substantial means more than a mere scintilla. The record when viewed on the whole, must lead a reasonable mind to conclude the claimant committed the offenses. Second Division Award No. 7237 (Roadley). Here, there is no evidence other than the claimant had a brief, though loud, discussion with a fellow employe over a frame. There is no testimony that other employes in the shop were prevented from performing work. The foreman's directive to the claimant to carry the frame to the furnace unequivocally resolved the matter. Also, the inferences from the record lead us to believe that the fellow employe was interfering with the claimant. The claimant wanted to carry the frame. The foreman merely confirmed that the claimant was correct. The organization's characterization of this matter as a mild and minor exchange of words is accurate. The carrier has failed to demonstrate, by substantial evidence in the record, that the claimant committed any of the charges. Therefore, the claimant is entitled to ten days back pay at the rate in effect when claimant served the ten day suspension.

A W A R D

Claim is sustained to the extent consistent with our findings.

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 6th day of August, 1980.