

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electrical Workers)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician J. D. Wilt was unjustly treated when he was held out of service of the Consolidated Rail Corporation for a period of eleven (11) days commencing at 12:30 P.M. on February 13, 1978.
2. That the Carrier was capricious, arbitrary and discriminatory when it assessed Electrician J. D. Wilt a thirty (30) day suspension subject to Rule 6-A-4 of the agreement.
3. That accordingly, Electrician Wilt be compensated for the period he was held out of service, with all benefits that are a condition of employment unimpaired, also reimbursed for all loss sustained, account loss of coverage of health and welfare and life insurance agreements during the time held out of service, and the discipline imposed of thirty (30) days be removed 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.

The fact situation in this case is reasonably clear. At approximately 9:50 A.M. on February 13, 1978, claimant - while on duty and under pay - became involved in an altercation with a fellow employe. The record describes it as a pushing, shoving, grabbing, name calling episode. This altercation was directly witnessed by two (2) other employes. Claimant was permitted to remain in service and continued his assignment until 12:30 P.M. that date when he was withheld from service. Charges were made against claimant and a hearing was scheduled to be held on February 16, 1978. At the request of the representative organization, the hearing was postponed until February 23, 1978. After the hearing was completed, claimant was returned to service. By notice dated May 2, 1978, he was assessed a thirty

(30) day suspension which was not served because of the probationary agreement between the parties applicable to disciplinary suspensions.

In presenting this dispute to our Board, petitioner has advanced several procedural arguments, among which are:

1. Claimant was improperly withheld from service;
2. Claimant's representative did not receive a copy of the hearing transcript until after the appeal hearing;
3. Carrier improperly used a tape machine to record the hearing.

Carrier argues that the altercation was a "major offense" as contemplated by Rule 6-A-1(b) which reads:

"(b) When a major offense has been committed an employee suspected by the Company to be guilty thereof may be held out of service pending trial and decision."

Carrier correctly argues that petitioner's contention relative to the representative not receiving a copy of the hearing transcript is not factually correct in that the local chairman did receive a copy of the transcript in compliance with the applicable provisions of the Rules Agreement.

Carrier also correctly contends that the use of tape machines to record hearings which are subsequently transcribed to paper and distributed to the interested parties does not violate any provision of the Rules Agreement.

We have reviewed the entire record in this dispute and have considered the arguments advanced by the parties. It is our conclusion that claimant was, in fact, responsible for instigating and engaging in an altercation with fellow employee Wertz. The hearing record contains more than substantial evidence to support the charge as made. We will not alter the disciplinary suspension as assessed.

However, the withholding of claimant from service pending the hearing is an entirely different matter. The Rule which permits this type of action restricts it to a "major offense". We are not implying that an on-property fight between employees could not qualify as a "major offense". We are saying that the fact situation in this case - including claimant's continuation in service for more than two (2) hours after the altercation - is indicative that in this instance a "major offense" situation did not exist.

Petitioner has asked that claimant be compensated for the full eleven (11) days on which he was held out of service pending the hearing. Yet, the record shows that petitioner's action caused the out of service time to be extended by seven (7) days. Clearly Carrier cannot be held responsible for this period of time.

We, therefore, order that claimant be compensated for the time lost during the period February 13, to and including February 16, 1978. The claim for the remainder of the out of service time is denied.

A W A R D

Claim for removal of the suspension is denied. Claim for payment for the out of service time is sustained to the extent outlined in the 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 1st day of October, 1980.