

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United
(States and Canada
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Welder Billy Sigman was unjustly dismissed from service on July 26, 1978. He was subsequently notified on October 27, 1978, that the discipline assessed him had been reduced to 90 days actual suspension.
2. Carman Welder Billy Sigman was erroneously charged with falsification of his time slip and failure to properly perform his duties on July 5, 1978.
3. That the Chicago and North Western Transportation Company be ordered to compensate Carman Welder Billy Sigman for all time lost in the amount of eight (8) hours per day, five days per week at the Carman Welders' rate of pay, and make him whole for all vacation rights, health and welfare and insurance benefits, pension benefits including Railroad Retirement Insurance and any other benefits which are a condition of employment in accordance with Rule 35.

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 was dismissed from service on July 28, 1978 after an investigative hearing on the following charge:

"Your responsibility in connection with your falsification of your individual time slip for July 8, 1978 which indicates you worked from 12:00 a.m. to 8:00 a.m., July 8, for a total of 8 hours straight time and your responsibility in connection with your failure to properly perform your duties between 12:43 a.m. and 8:00 a.m. July 8, 1978 while employed as Carman ..."

Before examining the hearing record as to the propriety of the disciplinary action, the Board takes note of what transpired during the processing of the claim on the property.

As attested in a letter from the Organization's Local Chairman to the Carrier's Assistant Vice President, the Carrier offer in a conference on October 5, 1978 to reduce the discipline from dismissal to a 60-day suspension without back pay. (The offer came shortly after the expiration of the Claimant's first 60 days out of service.) This was confirmed in a letter from the Carrier's Assistant Vice President dated October 18 in which it was stated, in part:

"... the carrier agrees to put Mr. Sigman back to work, pending a return to work physical, on a leniency basis with all benefits entitled to him except no payment for lost time ...

If Mr. Sigman feels he deserves further compensation, arrange to process this portion according to the agreement ..."

The record shows that this offer was declined by the Claimant. It is not clear whether he understood that he could have returned to work and still continued to press his claim for lost pay. In any event, a letter to the Claimant from the Assistant Vice President dated October 27, 1978 then stated:

"The discipline assessed by the carrier has been reduced to 90 days actual suspension and you should report for duty ... on Sunday October 29, 1978..."

There is no mention here of "leniency" but simply a reduction of the penalty. The changed penalty came precisely 90 days after the Claimant had been removed from service. He then returned to duty. It thus appears that the Claimant must bear at least a share of the responsibility -- if not all of it -- for his being out of work from approximately October 5 until October 29.

As to the offenses with which the Claimant was charged, he was scheduled to be on duty from 12 midnight to 8:00 a.m., July 8. He was observed from shortly after the start of his shift until 4:30 a.m. by two Carrier representatives who were specifically investigating whether or not the Claimant was performing his duties, along with another Carmen, as assigned for the shift.

Based on the record of the investigative hearing, the Claimant either arrived for work at 11:55 p.m. (his version) or somewhat later (according to the Carrier observers). There appears confirmation that he could not enter the premises because his senior fellow Carmen had not arrived with the key; that the Claimant had no key; and that the Claimant left the property to obtain a key from another employee and returned. The record shows that he was observed thereafter for most of the time until 4:30 a.m. The Board has no basis on which to dispute the findings of the Carrier that the Claimant failed to perform his assigned duties in an efficient and workmanlike manner during this period. What he did between 4:30 a.m. and the end of the shift was not observed and thus

cannot be part of a charge against him. Except for the period at the beginning of the shift when the Claimant apparently went to obtain a key so he could start his work, there is no evidence that he was not at his assigned location for that portion of the shift.

In judging the severity of the penalty, the Carrier may properly consider the employee's past record. Since this record shows two previous suspensions for failure to perform duties properly, and based on the observations of the supervisors in this instance, a relatively severe penalty is warranted. The part of the charge as to "falsification" of the time slip is, however, overstated. Therefore, some modification of the penalty is in order.

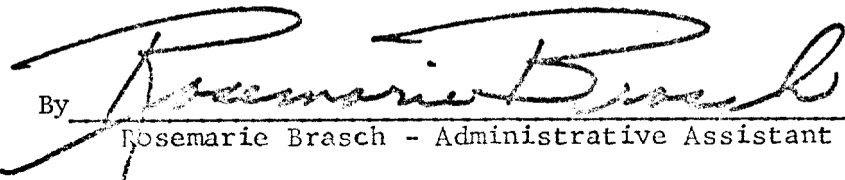
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Claim sustained to the extent of reducing the disciplinary penalty from 90 days to 75 days; the Claimant shall be made whole for regular time lost in the final 15 days of his disciplinary suspension.

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 19th day of November, 1980.