

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { Brotherhood of Railway Carmen of the United States
and Canada
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman E. E. Weihl was unjustly suspended from the service of the Illinois Central Gulf Railroad from June 5, 1978 until September 2, 1978, inclusive.
2. That the Carrier's initial declination, based on the sixty (60) day time limit rule, should be considered as a procedural defect and claim should be honored as presented.
3. That accordingly, the Illinois Central Gulf Railroad be ordered to remove the investigation from Mr. Weihl's personal file.
4. That accordingly, the Illinois Central Gulf Railroad be ordered to compensate Carman E. E. Weihl for all time loss and all other benefits as a condition of employment, account of the aforesaid unjust suspension.

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 claimant was a carman regularly assigned to the second shift at Carrier's East St. Louis, Illinois, Repair Track. On May 19, 1978, he was notified to attend a formal investigation at 10:00 A.M., May 24, 1978:

"... for the purpose of determining whether you absented yourself without proper authority, from your position as second shift Carman on the Repair Track at East St. Louis on May 17, and 18, 1978.

You may bring a representative and witnesses in your behalf as provided in your respective agreement.

This is to advise you that your personal work record file will be reviewed at this investigation."

At the request of representative of the Organization, the investigation was postponed and rescheduled for May 31, 1978. On June 5, 1978, claimant was notified that as a result of the investigation conducted on May 31, he was suspended from the service of the Carrier for a period of ninety days.

Rule 23 of the applicable Agreement provides:

"No employe shall absent himself from work for any cause without first obtaining permission from his foreman if possible, except in case of sickness, when he shall notify the foreman as soon as possible. 'Personal business' will be sufficient reason to request leave of absence without detailed explanation thereof."

A copy of the transcript of the investigation conducted on May 31, 1978, has been made a part of the record. In the investigation the Organization representative objected because he had not been allowed to sit down with a Supervisor and review claimant's personal work record, as referred to in the letter of charge. The Board has been referred to no rule in the Agreement to support such request. Disciplinary proceedings are not criminal proceedings requiring adherence to strict rules of evidence. It has been held in innumerable awards that it is proper for the Carrier to consider an employe's prior record in arriving at the discipline to be imposed. It was not a violation of the Agreement to review claimant's prior record in the investigation.

In the investigation it was shown that claimant was absent from duty without permission on May 17 and 18, 1978. The claimant contended that he was sick on the two days involved and that he did not have a telephone. No medical evidence was presented to support claimant's contention that he was ill, or if he was actually ill, that the illness was sufficiently debilitating that he could not inform his foreman.

In the investigation and in the handling of the dispute on the property, the contention was made by claimant's representative that claimant was in considerable pain and under medication due to a personal injury at the time the investigation was held on May 31, 1978. In the investigation it was brought out that claimant suffered an alleged injury on May 25, 1978, and that on May 26, 1978, he was released by the doctor to return to light duty on that day. The alleged injury occurred several days after the dates for which he was originally charged and investigation scheduled for May 24, 1978.

In its submission to this Board the Organization advances the novel contention that claimant was not afforded a fair hearing due to the fact that the hearing officer failed to accept claimant's reason for being absent. The determination as to whether an employe is granted a fair hearing is based upon the manner in which the hearing is conducted and not the resulting decision.

Part 2 of the Statement of Claim stems from the fact that the Carrier at one time erroneously took the position that the claim was not timely presented. However, in the Carrier's same letter of denial, October 4, 1978, it dealt at length with the merits of the dispute, and later, in the on-property handling,

agreed that the claim was not barred under the time limit rule. There is, therefore, no proper basis for Part 2 of the Statement of Claim.

Based upon the entire record, we find that claimant was granted a fair and impartial investigation; that there was substantial evidence in support of the charge, and that the discipline imposed, considering claimant's prior record, was not arbitrary, capricious or in bad faith. The claim will be denied in its entirety.

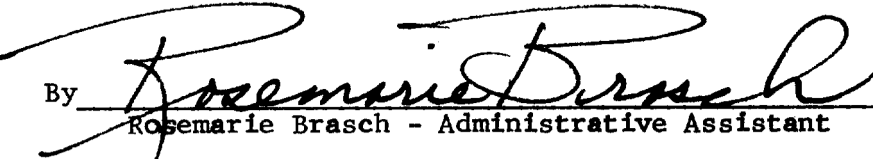
A W A R D

Claim denied.

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 4th day of March, 1981.