

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended and withheld Upgraded Carman Apprentice Tony F. Chicarello, Birmingham, Alabama from service on September 18, 1978 in violation of the controlling Agreement.
2. That the St. Louis-San Francisco Railway Company, conducted an investigation concerning Upgraded Carman Apprentice Tony F. Chicarello on November 20, 1978. That the St. Louis-San Francisco Railway Company failed to apprise Upgraded Carman Apprentice Tony F. Chicarello of the precise charge against him prior to the aforesaid investigation, in violation of the controlling agreement, and that the evidence produced at the said investigation, clearly and unequivocally demonstrated that Upgraded Carman Apprentice Tony F. Chicarello had not at any time violated Rules A, B or G of the Carrier's Rules and Regulations, as generally charged in the notice of investigation.
3. The St. Louis-San Francisco Railway Company failed to render a decision as to the outcome of the aforesaid investigation within sixty (60) days thereof, in violation of the controlling Agreement.
4. That on January 15, 1979 a proper grievance in writing was submitted to Mr. E. J. Allison, Superintendent Field Car Maintenance of the St. Louis-San Francisco Railway Company, based upon the Carrier's aforesaid failure to render a decision within proper time limits demanding that Upgraded Carman Apprentice Tony F. Chicarello be immediately returned to services with all pay for lost time beginning September 18, 1978 up to the date of his return to services, with six percent (6%) annual interest with seniority rights unimpaired and with all benefits lost as a result thereof and the St. Louis-San Francisco Railway Company failed to allow the claim or to furnish notification of the disallowance of the claim and the reasons therefore within sixty (60) days, in violation of the controlling Agreement, and that, as a result, the claim must be allowed as presented in accordance with the provisions of said controlling Agreement.
5. That Upgraded Carman Apprentice Tony F. Chicarello be restored to services with all seniority rights, vacation rights, and benefits that are a condition of his employment; that he be compensated for all lost time plus six percent (6%) annual interest; that he be reimbursed for all losses sustained because of loss of coverage under Health and Welfare and Life Insurance Agreements during the time he has been held out of service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On September 13, 1978, claimant, an upgraded carman apprentice, was arrested by the Jefferson County (Alabama) Sheriff's Department for allegedly selling cocaine. After an article concerning the arrest appeared in a Birmingham, Alabama newspaper, the carrier, on September 18, 1978, suspended the claimant from service pending a formal investigation. The investigation was originally scheduled for October 3, 1978 and was postponed until November 2, 1978 at the organization's request. Claimant was charged with violating Rules A, B & G. Rules A and B generally obligate employees to deal with the public in a civil fashion and to conduct themselves in a manner which will not subject the railroad to criticism. Rule G prohibits the use or possession of narcotics. On December 11, 1978, the claimant entered a voluntary guilty plea to the charge of sale of cocaine in the Jefferson County Circuit Court. By letter dated December 13, 1978, the carrier informed the Local Chairman that, "we find nothing new to change the situation concerning (the claimant)". The organization claims it did not receive the letter until January 31, 1979. According to the carrier, the letter was deposited in the Local Chairman's mail box in the General Foreman's office on or about the date of the letter. The Local Chairman was not on the carrier property for over a month beginning on December 15, 1978. The organization formally filed a grievance on claimant's behalf on January 15, 1979 and, in spite of objections made by both parties, the claim has been properly processed to this Board.

The organization raises a plethora of minor objections concerning the propriety of the notice of charges and the fairness of the hearing. While we will not specifically address these objections, we have considered them and we must overrule them.

The organization has raised four significant arguments regarding not only the procedural aspects of this claim but also the underlying substances of the claim. The four arguments are: 1.) the carrier failed to render a decision on discipline within 60 days after the investigation was held; 2.) the December 13, 1978 letter, even if timely delivered, did not constitute a disciplinary decision within the meaning of Rule 34(a); 3.) the carrier improperly suspended the claimant pending a hearing, and 4.) at the time of the hearing, the claimant had not been convicted of any criminal offense and, thus, the hearing was premature.

While a literal interpretation of Rules 35(b) and 34(a) does not mandate that the carrier issue a disciplinary decision within any set time period, we find

that the carrier did assess discipline within a reasonable time. On or about December 15, 1978, the carrier deposited the December 13, 1978 letter in the Local Chairman's mail box as was apparently the custom on this property. Once it delivered the letter, the carrier fulfilled its contractual obligations if the letter constituted the assessment of discipline. The organization argues that the letter cannot be interpreted as a disciplinary decision and therefore, the carrier never properly imposed a penalty on the claimant. The carrier argues that since the claimant had pled guilty to the criminal charges two days before the letter was sent, the language means that claimant's suspension was converted to a dismissal.

The carrier's letter of December 15, 1978 clearly lacked specificity. We must interpret the letter in a reasonable fashion and recognize the circumstances under which it was written. Claimant's admission of guilt on the cocaine charge two days prior to the date of the letter shows that the carrier was making a final disciplinary decision on December 13, 1978. The wording of the letter indicates that the carrier was imposing an indefinite suspension which is tantamount to a constructive discharge. Therefore, we reject the organization's arguments concerning the timeliness and content of the December 13, 1978 letter.

Turning to the organization's third argument, we rule that the claimant should not have been suspended pending a hearing. Rule 35(a) vests the carrier with the extraordinary power to suspend an employee pending an investigation, "... in proper cases..." We have found that a suspension is appropriate where the employee has committed a serious offense or where he has committed an offense which endangered the health and safety of himself or his fellow employees. Claimant's arrest for the possible sale of narcotics while away from company property hardly necessitates his immediate removal from service. Since the carrier improperly suspended the claimant pending the investigation, claimant would usually be entitled to back pay for the period from his suspension until the date of the hearing. Here, though, the organization requested a hearing postponement and the carrier should not be prejudiced for agreeing to the postponement. Thus, claimant is awarded back pay for the period from September 24, 1978 through October 3, 1978.

Lastly, we are confronted with a unique set of facts in this case. The carrier charged the claimant with various rule violations and held an investigation based merely on claimant's arrest. The discipline was assessed after the claimant entered his guilty plea on December 11, 1978. Dismissal is appropriate after the claimant has been convicted of a felony. Second Division Award No. 8237 (Roukis); Second Division Award No. 8205 (Franden). The investigation was premature but the claimant subsequently admitted that he violated the applicable rules when he pled guilty to the sale of cocaine. The carrier had no justification, prior to December 11, 1978, for withholding claimant from service.

Therefore, claimant is awarded back pay for the period from November 2, 1978 (the date of the investigation) through December 11, 1978 and for the period from September 24, 1978 through October 3, 1978 (as we indicated above). The dismissal is sustained. The claim for additional back wages and other retroactive benefits is denied.

A W A R D

Claim for reinstatement is denied.

Claim for back wages 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of April, 1981.