

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (Larry J. Cook, Petitioner
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

Petitioner claims that he was unjustly and improperly suspended from the Illinois Central Gulf Railroad Company for thirty (30) days beginning at 7:00 A.M., December 13, 1978 and ending January 12, 1979 at 3:00 P.M. in violation of Rule 39 of the Schedule A Agreement between the I.A.M.-A.W. and the Illinois Central Gulf Railroad Company. Petitioner further claims the facts as set forth by various witnesses failed to support the finding that petitioner made any false statements at the investigation of one M. A. Vollenweider concerning said Vollenweider's alleged failure to comply with certain instructions given to him by his supervisor on or about October 11, 1978.

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.

On October 11, 1978, petitioner was operating a fork lift truck while assisting M. A. Vollenweider in the installation of a new coupler on engine 8307. The coupler became jammed and M. A. Vollenweider reached under the engine to insert a pin so that the fork lift could be removed without repositioning the coupler. The coupler moved slightly when the fork lift backed away from the engine. The petitioner claims that M. A. Vollenweider injured his hand when it was jammed between the coupler and the carry iron bar. Shortly thereafter M. A. Vollenweider was unable to move a twelve (12) foot long pipe section when requested to do so by his foreman, J. R. Hall, claiming injury to his hand. J. R. Hall took this inability to perform the task to be insubordination and charges were brought against M. A. Vollenweider on those grounds. Larry J. Cook, petitioner, testified at that hearing and was then charged with giving "false statements" at the investigation of M. A. Vollenweider's case.

Petitioner Cook contends that his hearing was conducted in violation of Rule 39 of the Schedule A Agreement which provides in pertinent part:

"... such employee will be appraised of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses..." (emphasis added)

The Organization claims that petitioner has been denied his rights under Rule 39 since "he is yet to be advised of the precise charges against him". The Organization notes that while he had been told that he allegedly made "false statements", he was not informed which statement or statements were the one or ones in question.

The petitioner claims he was unjustly and improperly suspended. He further claims the facts set forth by various witnesses fail to support the Carrier's claim that he made any false statements at the investigation of Vollenweider.

The Carrier maintains the notice was precise and the petitioner knew what the company was questioning him about when it recreated the incident. The Carrier argues that it has the right to expect its employees to tell the truth be it at a disciplinary hearing, an accident investigation or giving statements to claim agents.

The Carrier asserts it did not believe the Petitioner's story and that it proved he was lying. It further contends the discipline was warranted.

The notice of discipline read as follows:

"At the investigation in the Conference Room of the Division Office Building, Harahan, Louisiana, at 8:30 AM, December 4, 1978, it was disclosed that you did make false statements at the investigation which was held in the Conference Room of the Division Office Building, Harahan, La., at or about 8:30 AM, to determine whether or not Mr. M. A. Vollenweider, Jr., refused to comply with instructions given to him by General Foreman J. R. Hall on October 11, 1978, at or about 11:50 AM, to remove a long pipe from in front of the middle ramp steps in Mays Yard Roundhouse.

Because of your having made false statements in the investigation you are assessed thirty (30) days suspension from the service of the Illinois Central Gulf Railroad, beginning 7:00 AM, December 13, 1978, and ending January 12, 1979 at 3:00 PM.

You may return to your regular tour of duty on January 13, 1979.

Giving false testimony in an investigation is a most serious offense. Leniency is being shown you in this case because of your past record."

The central element in the instant case is whether or not the Claimant, who was on the fork lift, could actually see the injury alleged to be received by Vollenweider who was working under the coupler. The Claimant's testimony at the Vollenweider's hearing, that he saw the injury take place, was challenged by the Carrier. The scene of the incident was recreated with all assembled. The re-enactment demonstrated that the location where the alleged injury took place could not actually be observed from the position on the fork lift occupied at the time by the Claimant.

In reference to the specificity of the charges, we would note that the disputed testimony of the Claimant at the earlier hearing was rather brief and precise covering what he claimed he witnessed. Given such limited testimony, the charge of giving "false testimony" is found to be sufficiently specific in the instant case to meet the requirements of Rule 39 of Schedule A. The Claimant received reasonable notice of the specific charge against him, sufficient to prepare an adequate defense.

It is a well established principle that the Board will not set aside a disciplinary action of the Carrier unless such action clearly appears to be unjust, unreasonable, capricious or arbitrary (see Third Division Awards 10571 Referee LaBelle and 11324 Referee Dolnick). The evidence and re-enactment reasonably indicates that the Claimant could not have observed that which he testified he had observed, thus giving adequate support to the charge of giving false testimony. This case is identical to that in Award No. 8864.

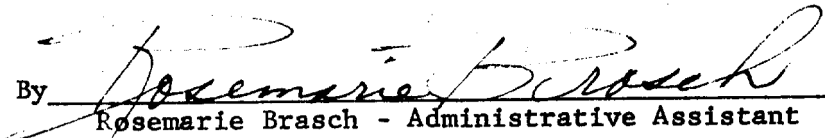
A W A R D

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 13th day of January, 1982.