

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute:     { Sheet Metal Workers' International Association  
                              { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad Company violated the controlling agreement, particularly Rule 39, when they unjustly suspended Sheet Metal Worker Ellis McKinney from service ninety (90) working days starting at 3:00 p.m., September 11, 1978, and ending at 11:00 p.m., January 12, 1979, as a result of formal investigation conducted at Woodcrest Shop on August 24, 1978.
2. That the Carrier be ordered to reinstate Mr. Ellis McKinney to service, seniority rights unimpaired and pay him for all wages lost due to his improper suspension.
3. Make claimant (McKinney) whole for all losses.
4. Compensate claimant for all overtime losses.
5. Compensate or make whole for the claimant all holiday and vacation rights.
6. Pay premium on Health and Welfare Travelers policy.
7. Pay Illinois Central Gulf Hospital Association dues.
8. Pay premium on Provident Insurance policy.
9. Pay premium on Aetna dental policy.
10. Pay interest of 6% on all lost wages, overtime, holiday and vacation time.
11. Remove all charges brought against claimant from his personal 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.

An investigation was held on August 24, 1978 to determine whether Claimant was absent from his assigned duties between 3:10 P.M. and 5:00 P.M. on August 11, 1978. Based on the investigative record, Carrier concluded that he was impermissibly absent and assessed a 90 day suspension penalty. This disposition was appealed.

In defense of his position, Claimant raises several procedural objections, which he contends affected his contracted for due process rights. He argues that the August 15, 1978 notice of investigation did not state any rule or rules which were allegedly violated and asserts that the hearing officer's assumption of multiple investigatory roles prejudiced his right to a fair and impartial trial. He argues that the testimony of Carrier witnesses were contradictory and inconsistent and of no evidentiary value in supporting the charges. Specifically, he contends that the testimony of Machinist C. Luster and Boilermaker R. LaPointe confirm that he was in his work area during the time in question.

Carrier contends that he was afforded an investigative trial consistent with established due process standards and that the record unmistakably shows that he was improperly absent from his assigned duties. It asserts that he was given a clear and specific order by Supervisor R. P. Seely to remove drain hoses from locomotives #8272 and 8095 and also to work slips and check both locomotives, but that the work was not done. Supervisor Seely testified that he could not find Claimant, despite his diligent search for him in the work area, until about 5:00 P.M. when he saw Claimant come out of the compartment behind the cab of locomotive #5050 and other Carrier witnesses testified that they distinctly heard Claimant being paged on the public address system.

In our review of this case, we concur with Carrier's position on both procedural and substantive issues raised. Careful analysis of the investigative record does not reveal that Claimant's due process rights were violated. He was sufficiently apprised in the August 15, 1978 notice of investigation that he was being charged with absence from his assigned duties and he was capable of preparing a competent defense. He was not disadvantaged by this notification and importantly, he did not object at the beginning of the investigatory proceeding, when the hearing officer asked him if he was ready to proceed. Moreover, we find no inconsistency among the three roles assumed by the hearing officer, since it is judicially proper under the decisional law of the Board for a Carrier official to proffer charges, conduct an investigation and render a disciplinary decision. (See Second Division Award Nos. 8147, 5972, 3613, 1795 and Third Division Award Nos. 13383, 16347 and 16678). In addition, we find no evidence that his past disciplinary record was used to establish guilt as charged by Claimant, but rather we find that it was used to determine the extent of the discipline administered.

As to the substantive specification, we find substantial evidence of record, particularly, the un rebutted and amply corroborated testimony of Supervisor Seely, that Claimant impermissibly absented himself from his duties, notwithstanding explicit instructions to perform work on locomotives #8272 and #8095. He was pointedly guilty of this charge. While we are reluctant to modify Carrier's disciplinary penalty because it reflects a fidelity to the principles of progressive discipline, we believe that 90 days suspension is somewhat excessive and we will reduce it to 60 days suspension. We warn Claimant, however,

that we will not look kindly upon future recidivist behavior and expect him to comport faithfully with his employment obligations. He is to be compensated only for the wages losses suffered during the 30 days subtracted from the original 90 days suspension, minus any wages he earned elsewhere during this period.

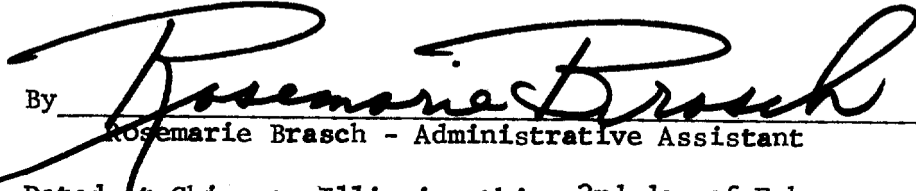
A W A R D

Claim sustained to the extent expressed herein.

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 3rd day of February, 1982.



DISSENT OF CARRIER MEMBERS  
TO AWARD 8896, DOCKET 8752  
(Referee Roukis)

The Majority in this Award correctly ruled that none of Claimant's procedural rights was abridged; Claimant was "pointedly guilty" of the charge, and that the penalty reflected "a fidelity to the principles of progressive discipline." A reader versed in the numerous Awards of this Board adhering to the principle that the Board may not substitute its judgment for that of the Carrier would expect that the logical conclusion to the Majority's "Findings" would be a denial Award. However, the Majority, after making these astute observations, made an about-face and for some inexplicable reason reduced the 90 days suspension to a 60 days suspension.

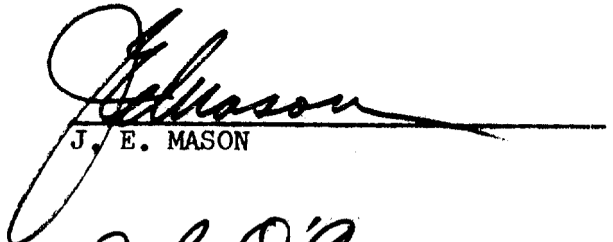
The Majority's conclusion is all the more unbelievable when one takes note of Claimant's past discipline record, which the Majority purportedly considered. During his eight years of service with the Carrier, Claimant compiled nine (9) letters in his file regarding either tardiness or absenteeism, was disciplined on one occasion for 27 days for leaving the property without permission and on another occasion was disciplined 45 days for absenteeism. The instant case was but another example of Claimant's cavalier attitude towards the performance of his duties with the Carrier.

Considering the fact that numerous Awards of this Board have ruled that dismissal is proper in situations of this nature, the Majority's reduction of the discipline in this case was totally unwarranted and without justifiable reason.

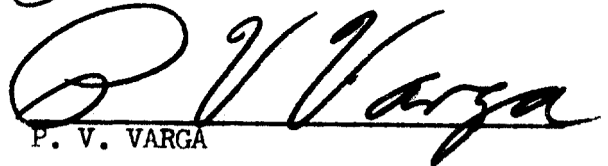
Hence, we dissent.

  
J. M. FAGNANT

  
D. M. LEFKOW

  
J. E. MASON

  
J. R. O'CONNELL

  
P. V. VARGA