

The Second Division consisted of the regular members and in addition Referee Clarence H. Herrington when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

1. Restore claimant to service of Carrier with all seniority rights unimpaired.
2. Compensate claimant for all time lost in addition to an amount of 6% per annum compounded annually on anniversary date of claim.
3. Make claimant whole for all vacation rights.
4. Reimburse claimant and/or his dependents for all medical and dental expenses incurred while employee was improperly held out of service.
5. Pay to the claimant's estate whatever benefits the claimant has accrued with regards to life insurance for all time claimant was improperly held out of service.
6. Pay claimant for all contractual holidays.
7. Pay claimant for all contractual sick pay.
8. Pay claimant for all jury duty and all other contractual benefits.

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, R. E. Laboris, a Sheet Metal Worker, was employed by the Carrier at its Hialeah, Florida facilities on April 22, 1974.

On June 13, 1979, Claimant sustained a slight injury to his finger. By letter dated June 28, 1979, the Claimant was notified to attend an investigation to be held July 5, 1979, for alleged insubordination and failure to promptly report a personal injury.

The investigation was rescheduled and held on July 19, 1979. The Claimant was given a formal letter, dated October 11, 1979, removing him from service for violation of Rule 12, that portion reading "*** insubordination ***" and Rule 10, that portion reading "Employes must report promptly to supervisor any personal injury occurring on duty ~~or on Company property.~~"

A careful review of the record shows that Claimant was afforded a fair and impartial hearing prior to his dismissal. While this Board certainly does not condone the action of the Claimant, it is felt that a thorough study of the transcript of the formal investigation reveals that Claimant does have a language problem and thought he had reported the personal injury to his supervisor. His actions justified severe discipline since he did not explicitly follow the rules as required.

This Board has consistently, in prior awards, held that actions by a Claimant, such as are involved in this dispute, were grounds for dismissal. We have been reluctant to substitute our judgement for the judgement of the Carrier in such cases and have avoided reinstating discharged employes who have been found guilty of such offenses. The Board, however, on some occasions reversed a Carrier's action if we thought the discipline imposed was arbitrary or capricious, or the discipline had by the time of our deliberations served its purpose.

In the instant case, the Board holds that the discipline imposed to date has served its purpose. Claimant must be made aware that if he is involved in any further major infraction this Board would, without doubt, deny a further chance to return to work.

A W A R D

Claimant is returned to service without any back wages or payment for lost benefits.

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.