

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 8913  
Docket No. 9042  
2-C&NW-FO-'82

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

Parties to Dispute: { International Brotherhood of Firemen & Oilers  
Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Ralph G. Pridgeon, Hostler Helper, Marshalltown, Iowa, was unjustly dealt with when suspended for a period of thirty days (September 16, 1979 through October 16, 1979), following hearing held on September 5, 1979.
2. That accordingly, the Chicago and North Western Transportation Company be ordered to compensate Mr. Ralph G. Pridgeon for all time lost at the pro rata rate and the mark removed from his 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 employees 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 employed as a laborer by the Carrier at its Marshalltown, Iowa, diesel shops on April 19, 1978. On August 10, 1979, the Claimant was directed to appear for an investigation on the following charge:

"Your responsibility in connection with falsifying your time card for August 7, 1979, when you claimed 8 hours (11:00 PM to 7:00 AM) and were actually observed in the shower at approximately 6:45 AM while employed as a laborer on Job 091 at Marshalltown Diesel Shop, Marshalltown, Iowa."

The Claimant testified at the investigation that approximately 1 hour prior to quitting time he spilled some diesel fuel on his leg. After about 30 minutes his skin became irritated and he took a shower. However, two of his fellow employes testified that they did not see any diesel fuel on the Claimant's clothing nor did they smell any on him.

The Board is confronted with a sharp credibility conflict in testimony. However, the Board has consistently refused to determine the credibility of

witnesses. The principle that the Board may not substitute its judgement for that of the Carrier when there is a conflicting testimony is well established.

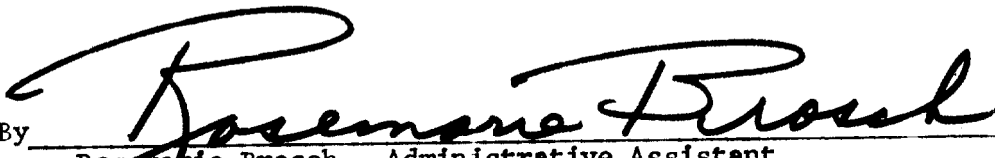
There is nothing contained in the record to suggest that the Carrier was arbitrary or capricious in assessing the penalty imposed, therefore, the Board will deny the claim.

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 10th day of February, 1982.