

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the action of the Consolidated Rail Corporation (ConRail) to the suspension of Electrician Louis J. Abdoo from the service for a period of thirty-four (34) days was arbitrary, capricious and unjust.
2. That accordingly the Consolidated Rail Corporation (ConRail) be ordered to compensate Electrician Louis J. Abdoo all wages lost during the time of his suspension from the 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 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, Mr. L. J. Abdoo is a diesel inspector/maintainer holding a regular position as a Flying Squad Repairman for the Consolidated Rail Corporation (ConRail) at this Carrier's North Yards in Detroit, Michigan. On August 10, 1979 Claimant received Carrier Form G-32, Notice of Discipline: thirty-four (34) days actual suspension "of which time taken out of service to be credited toward discipline". This suspension was the result of a formal trial, held on August 7, 1979, of the charge by Carrier that Claimant had been insubordinate by refusing "a direct order and duty on locomotive 5611 on July 7, 1979" during his tour of duty.

The central issue of insubordination in the instant case revolves around whether Claimant was given a direct order on or about 9:20-9:30 P.M., on August 7, 1979 by Mr. R. Bowen, General Foreman, Detroit Enginehouse to install a fuel pump motor or assembly on engine 5611 and whether Claimant directly disobeyed this order. The obligation of Carrier, in discipline cases such as these, is to show cause that substantial evidence exists for the penalty assessed the employee. Despite the contention to the contrary by the Claimant that the trial itself was unfair and partial -- which contention was contravened by Claimant's own representative, the Local Chairman of his union -- the Board, after analysis of all information presented in this case, finds that Carrier has met the test

of substantial evidence. It may well be, as the trial minutes show, and which Claimant's appeal documents corroborate, that there was some disagreement between Claimant and witnesses as this relates to facts which transgressed prior to the incident in question. But this is fundamentally moot to the issue at hand in this case wherein there is no disagreement between chief witnesses and Claimant himself. The chief witnesses state that Claimant refused to obey a direct order and Claimant does not deny this. If Claimant did not think that the order in question was reasonable and/or if Claimant thought the order implied an undue inconvenience since it required that he work beyond the hours of his normal shift, the appropriate measure for him to have taken would have been to obey the order and grieve it at a later point. To do otherwise, which is what Claimant did, undermines the authority structure necessary for the proper maintenance of any work organization. To comply now, and grieve later is a principle which this Board has held in many past awards and to which it subscribes once again in the instant case (See Second Division Awards 7643, 8336, 8223 inter alia).

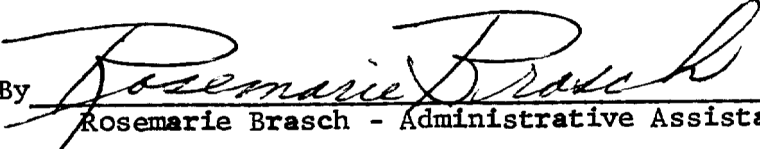
It is not the function of the Board, in its appellate role, to substitute its judgment for that of Carriers in discipline cases. It may, however, in view of the principle of progressive discipline, amend the degree of discipline imposed upon a Claimant if it deems that the circumstances of a given case warrants it. In the present instance Claimant has no back record made known to the Board of insubordinate infractions with Carrier and it is arguable that the actual number of suspension days i.e. 34, which the Board finds excessive, was directly and arbitrarily related to the time-frame from the time of the alleged violation to the issuance of the discipline decision itself since the Claimant was relieved of duties pending the trial. In view of this the Board orders that Rule No. 7 (e) of the Agreement between the parties be applied and that the suspension of thirty-four (34) days be reduced by ten (10) days to twenty-four (24) and that the Claimant be made whole, as per Rule No. 7(e) for these ten (10) days all the while averring to Claimant the seriousness of insubordination, for his own future reference, which if not checked can reasonably include dismissal as Carrier remedy.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1982.