

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly and arbitrarily dismissed Carman Charles A. Poe, Kansas City, Kansas, from service on May 17, 1979, following an investigation conducted on May 15, 1979, in violation and derogation of the controlling Agreement and by deliberate misapplication of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employees.
2. That the St. Louis-San Francisco Railway Company failed to apprise Carman Charles A. Poe of the precise charges against him prior to the investigation, amended and expanded the charges without notice to Claimant and failed to produce relevant evidence at the investigation demonstrating that Charles A. Poe had violated Rule B of the Carrier's Rules and Regulations at any time, thereby denying him a fair hearing in violation of the controlling Agreement.
3. That the St. Louis-San Francisco Railway Company discriminated against Carman Charles A. Poe and other members of Local 502 by denying them leave of absence in the performance of Union duties in violation of Rule 37 of the controlling Agreement and that Carman Poe was disciplined as a result of his attempt to protect the rights of his membership in the face of this discriminatory conduct.
4. That Carrier's officers have interjected matters outside the record constituting highly irrelevant, immaterial and inflammatory information into the appeal process of this claim and have relied upon this prejudicial and foreign material to uphold Claimant's discharge in violation of the controlling Agreement.

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.

The Claimant was assigned to work the 8:00 a.m. to 4:00 p.m. shift on May 1, 1979. At about 8:00 a.m. he informed Foreman Robert Doleshal that as Chairman of Local Protective Board No. 502 he was requesting leave for himself and two other carmen to conduct Organization business. The Claimant explained that the three would like to leave work at 2:30 p.m. to meet one of the Organization's attorneys at the airport. Doleshal agreed, work load permitting.

At 2:30 p.m. Doleshal told the Claimant that the work load precluded his releasing all three men, but that he would release the Claimant and one other carman. A heated discussion then arose between the two men, with the Claimant allegedly becoming argumentative, vicious, and threatening toward Foreman Doleshal.

The Carrier notified the Claimant via a May 5, 1979 notice that a formal investigation would be held on May 15, 1979, "... to develop the facts and determine your responsibility, if any, in alleged insubordination approximately 2:30 p.m. on May 1, 1979, argumentative attitude, vicious, and threatening your immediate supervisor, R. J. Doleshal."

After careful study of the record in this matter, the Board has concluded that the Carrier's May 5, 1979 notice to Claimant was sufficiently precise to apprise him of the charges against him prior to the investigation. The Carrier's investigation of these charges was conducted fairly and in accordance with the controlling Agreement.

The Carrier did not discriminate against the Claimant and other members of Local 502 in violation of Rule 37 of the controlling Agreement. In fact, the totality of Foreman Doleshal's conduct on May 1, 1979 suggests that he acted in good faith to grant the Claimant's request to leave work on account of union business. When notified at 8:00 A.M. that day of the Claimant's request to leave with two other employes at 2:30 P.M., he was receptive, even though the nature of the so-called "union business" (i.e., meeting an attorney at the airport) was highly questionable. Moreover, Foreman Doleshal agreed at 2:30 P.M. to let the Claimant leave for this purpose with one employe, but not two, owing to workload demands. It therefore appears that Foreman Doleshal acted reasonably, based on his perception of the needs of the work environment.

The Carrier's assertion that the Claimant became belligerent and insubordinate to Foreman Doleshal is denied by the Claimant; yet in light of his overall work record it is reasonable to conclude that the Carrier's version of the events of May 1, 1979, is the more accurate.

The Carrier did not unjustly dismiss the Claimant from service on May 17, 1979.

A W A R D

Claim denied.

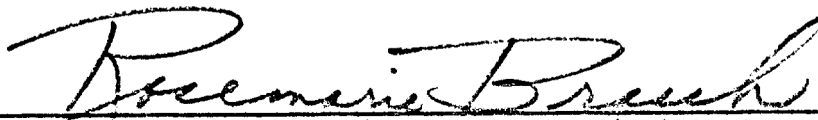
Form 1
Page 3

Award No. 9194
Docket No. 8860
2-SLSF-CM-'82

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 22nd day of July, 1982.