

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler J. V. Vuscovich, was unjustly suspended from the service of the Carrier, for fifteen (15) working days without pay.
2. That accordingly, the Carrier be ordered to compensate the aforesaid employee for the time lost of the fifteen (15) working days he was held out of service. At the pro-rata rate of the position he held at the time he was suspended.

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.

This claim involves a charge that Claimant removed another employe's personal property without that employe's permission. An investigation was held on October 16, 1979, and, as a result, Claimant was issued a fifteen (15) day suspension.

On the day in question, October 9, 1979, Claimant was assigned as a Hostler Helper at 8:00 A.M. That morning, the Shop Superintendent pointed out to Claimant he was wearing rubber boots, which are dangerous to wear when climbing onto and off of locomotives in motion. Claimant's leather boots were in poor condition. Claimant was advised he would have to be put on steam cleaning. Claimant requested permission to leave the property and purchase a pair of boots. This was denied. Claimant asked Diesel Foreman for permission to leave in order to arrange a court date. A few minutes later, Claimant returned and stated he did not have to leave because he had borrowed a pair of boots and was ready to return to his job as a Hostler Helper. That same afternoon, an employe came to the Shop Superintendent and reported that someone had removed his boots from his locker. The boots were placed on top of his locker the next morning.

The Organization contends Claimant's rights were violated by the Hearing Officer, who ruled the Local Chairman could not be his representative because he was a witness and, furthermore, Carrier failed to produce witnesses or evidence to substantiate charges against Claimant.

In this matter, the Local Chairman was an essential witness to Claimant's defense. All witnesses were excluded from the investigation until they testified. Claimant was represented by the Union Secretary and Committeeman. Several controverted issues of fact existed herein, and the exclusion of all witnesses, including the Local Chairman, was proper exercise of discretion by the Hearing Officer.

Analysis of the record fails to support the Organization's contention that Carrier failed to prove the charges. It is not the function of the Board to substitute its judgement where there is conflicting testimony as long as substantial evidence exists to support the Carrier's conclusions. This is not a case of theft. Claimant is charged with removal of personal property without permission. Regardless of which pair of boots were actually worn by Claimant, the preponderance of evidence fully upholds the Carrier's judgement the boots were taken by Claimant without permission of the owner. If the decision to impose the degree of penalty rested exclusively with this Board, perhaps, a lesser discipline might have been issued. Having judged the Carrier's findings in the affirmative, however, we are disinclined to disturb the penalty.

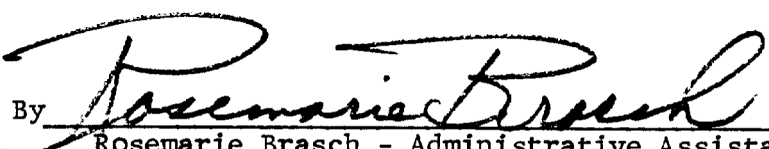
A W A R D

Claim denied.

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.