

The Second Division consisted of the regular members and in addition Referee Thomas A. Bender when award was rendered.

Parties to Dispute: ( (Brotherhood Railway Carmen of the United States and Canada  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it unjustly assessed Carman J. W. Hill a five (5) day actual suspension on October 19, 1979, as a result of investigation held September 4, 1979, at Cleveland, Ohio.
2. That the Norfolk and Western Railway Company be ordered to pay Carman J. W. Hill in full for the period of his suspension.

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 grievant in this matter is a Carman at the Carrier's repair tracks in Cleveland, Ohio. The Organization is grieving the fact that Mr. Hill received a five (5) day suspension for insubordination. Specifically, Mr. Hill refused to do some welding after being properly directed by the Car Foreman.

A review of the investigation transcript clearly supports the fact that Mr. Hill did refuse to do the welding. Mr. Hill very candidly admitted that he had refused. His explanation for the refusal focused on a dispute as to the rate of pay for welding. Mr. Hill stated that on many occasions he had been paid the wrong rate when he performed welding. Moreover, it was late in the shift and Mr. Hill felt the job was too large to tackle at that point in the shift.

Mr. Hill has been employed in the Railroad Industry for over twenty-eight and a half years (28½). Given that long tenure we are sure he understood the potential consequences of his refusal. A long line of veteran arbitrators have written volumes on the simple proposition that an employee's first duty is to perform when properly instructed and then file a grievance if the situation so dictates; i.e. work now grieve later. Had the grievant followed this simple tenet he would not have been suspended. Five days is not an arbitrary, capricious or unreasonable assessment of discipline and will therefore not be modified.

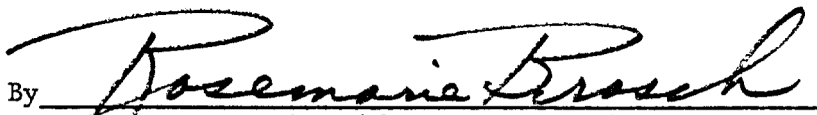
The Carrier argues that the contesting of discipline is not covered by any rule in the labor contract. Fortunately, the Carrier did not spend a great deal of time developing that position. See Rule 28 of the Agreement.

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.