

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. (a) That Carman Apprentice D. R. Varner was improperly given a twenty (20) day actual suspension from service of Carrier from March 10, 1980, through April 4, 1980, inclusive in violation of Rule 34 of the Current Agreement by way of letter dated March 5, 1980, and
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Reed for all time lost as a result of said improper suspension, or one hundred and sixty (160) hours at the straight time rate of pay, plus six percent (6%) interest.
- (c) Carrier should also be instructed to clear Carman Varner's personal file of all implications and allegations as charged.
2. (a) That the Carrier is improperly giving actual days suspension as discipline which is not in line with the provisions of Rule 34 Discipline, of the Current Agreement, and
- (b) Accordingly, carrier should be instructed to suspend such actions until such time as the matter of giving actual days off has been contractually agreed to.

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, B. R. Varner began his employment with the Carrier on July 5, 1978 and at the time of the incident in question held the position of Lead Carman, Sibert Shops, Mobile, Alabama, 11:00 P.M. to 7:00 A.M. shift. On January 29, 1980 Claimant was notified to attend an investigation on February 12, 1980. He was charged with:

"... responsibility of failing to administer your duties as Lead Carman, January 19, 1980, at Sibert Yard at the Car Shop, Mobile, Alabama in that you were found inside the Carman's write-up building while on duty between 1:45 A.M. and 2:00 A.M., by Assistant Departmental Foreman T. S. Holland with the lights turned out and Carman A. R. Gregg working under your jurisdiction being found asleep by Mr. Holland prior to finding you inside the write-up building."

On March 5, 1980 Claimant was notified that he had been found guilty as charged and that he was being assessed an actual suspension from service of twenty (20) working days.

An analysis of the transcript of the investigation indicates that sufficient substantial evidence is present to warrant that Claimant is guilty as charged. After working the job of Lead Carman for a short period of time after which Claimant bid on it according to the testimony presented at the hearing, Claimant assured Mr. J. Little, Assistant Departmental Foreman, that he thought that he could handle the job. The duties of this position, which were laid out in bulletin No. 2047, dated December 19, 1979 when Claimant bid on it, clearly stipulate supervisor responsibilities over other Carman. Further, it taxes the credulity of this Board to suppose that Carrier employees can productively and efficiently perform the jobs for which they are paid when they are sitting in a room in the dark which is the situation in which Car Foreman Holland found Claimant on the night of January 19, 1980.

The contention of the Organization in the present case, however, is not only that the Claimant is not culpable, which this Board respectfully disagrees with as noted above, but that the hearing was not fair and that the sanction ultimately levied against the Claimant by the Carrier was in contravention of Rule 34 of the controlling Agreement. That part of this Rule in dispute is the following: "No employee shall be disciplined without a fair hearing by designated officers of the Carrier". It is the claim of the Organization that this Rule, as written, does not permit Carrier to assess actual suspension days as a sanction against Carrier employees.

This Board finds no grounds on which to determine that the hearing was unfair. With respect to that part of Rule 34 in dispute, this Board underlines that it finds it to be no more than the result of general language negotiated by the parties to the Agreement. By definition, general language, which is common in union contracts in all industries in the U.S., gives itself to variable interpretations: if the parties wish to specify further their set of understandings on discipline, or on anything else, they may always do so in succeeding rounds of collective bargaining negotiations. With all due respect to the prior Award 1195 (1947) which did not take a position on the meaning of the general language quoted above of Rule 34, this Board now rules that until and unless the Organization negotiates a specific meaning to this part of Rule 34 there is no contractual burden on the Carrier to do other than to use common sense and fair management practices in issuing sanctions when it determines that an employee is guilty as charged. It is, of course, the contractual right of an employee, under Rules 32 and 33 of the same controlling Agreement, to appeal on merits or on procedural grounds any discipline received as a result of an investigative hearing.

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Award No. 9381
Docket No. 9338
2-L&N-CM-'83

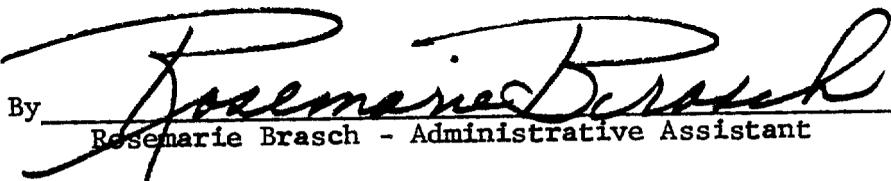
A W A R D

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 2nd day of February, 1983.