

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
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company was in violation when Carman W. A. McGlenn was summoned to appear for investigation on September 27, 1979, charged with violations of the rules and regulations of the mechanical department.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to remove from Carman McGlenn's record the violative reprimand placed there on October 17, 1979 after the beforementioned investigation.

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. W. A. McGlenn, received notice by letter dated August 16, 1979 to appear for an investigative hearing on August 20, 1979. Claimant was charged with allegedly engaging in an altercation with another carman on August 9, 1979 which resulted in alleged personal injury to Claimant when he fell from the shop crane on which he was sitting. As a result of the investigation which ultimately took place on September 27, 1979, because of a postponement request by the Organization, Claimant was notified on October 17, 1979 that he was found to be in contravention of Rules 14 and 29 of the Rules and Regulations of the Mechanical Department, Form MD-500.

Rule 14 states:

"Employees must not unnecessarily interrupt, by conversation or otherwise, other employees in the discharge of their duties. Anything that may distract from the good order of the shops is prohibited."

Rule 29 states:

"Any employee receiving an injury will report same to his foreman as soon as he is able to do so."

In effect, Carrier claim was that Claimant did engage in an altercation with his fellow carman, in violation of Rule 14, and that the alleged injury which resulted from this, by Claimant's own admission, was not reported until August 10, 1979 in violation of Rule 29. Claimant was notified that as a result of the above Rule violations a letter of reprimand was being placed in his personnel file. After appeals were filed in an orderly manner on property to have the letter of reprimand removed, this case is now before the National Railroad Adjustment Board. The contention of the Organization is that the Carrier violated Rule 32 of the controlling Agreement when it placed the letter of reprimand in Claimant's file since Rules 14 and 29, which Claimant allegedly violated, are not part of that same controlling Agreement. That part of Rule 32 to which reference is here made is the following:

"No employee shall be disciplined without a fair hearing by a designated officer of the company."

An analysis of the record before the Board leads it to conclude that sufficient substantial evidence is present to substantiate the Carrier position that Claimant was in contravention of Rule 14 of the Rules and Regulations of the Mechanical Department. Without in any way denying that the Carrier is within its rights when applying contractual Rule 32 when employees are found in contravention of Carrier's own unilaterally generated rules (as long as these are not in contradiction to those rules contractually established), the Board also holds that Carrier erred in its contention that Claimant violated Rule 29. If Carrier wished to pursue the issue of personal illness reporting in this instance it would have been better advised to do so, in the mind of the Board, by making reference to Rule 40 of the controlling Agreement rather than Rule 29 of the Mechanical Department. Since it did not do so the Board views the issue of personal illness reporting in the instant case as moot. Rule 40 of the controlling Agreement reads, in pertinent part:

"Employees injured while at work are required to make a detailed report of the circumstances of the accident just as soon as they are able to do so after receiving medical attention."

There is no question, however, that it was appropriate for the Carrier to apply Rule 32 of the controlling Agreement when disciplining the Claimant for contravention of Mechanical Department Rule 14. It is a well established tradition of this Board that -- "... General Rules promulgated by a Carrier, unless they contravene the terms of a collective bargaining agreement, are mandatory standards with which an employee agrees to comply ... (and) ... (F)ailure to comply subjects him to disciplinary action" (Second Division Award 5987). In view of this, as well as the preponderance of substantial evidence as this relates to Claimant's violation of Rule 14, the Board will not disturb Carrier's position in this matter.

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Award No. 9382
Docket No. 9346
2-SCL-CM-'83

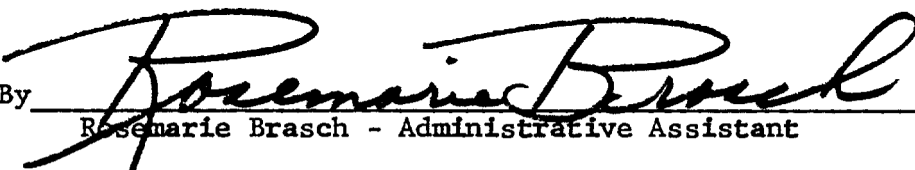
A W A R D

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.