

The Second Division consisted of the regular members and in addition Referee George V. Boyle when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Service Attendant C. A. Lindsey, I. D. No. 327424, was unjustly suspended from the service of the Louisville and Nashville Railroad Company on June 5, 1979, through August 3, 1979, after a formal investigation was held in the office of Mr. O. B. Padgett, Master Mechanic, and Conducting Officer, on May 2, 1979.
2. That accordingly C. A. Lindsey, Service Attendant, be restored to his regular assignment at Boyles Shops, Birmingham, Alabama, compensated for all lost time and that he be properly restored to his rightful position, vacation, health and welfare, hospital and life insurance and dental insurance be paid June 5, 1979, through August 3, 1979, and the payment of 6% interest rate be added thereto.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 employed at the Carrier's Boyles Shops in Birmingham, Alabama as a Sand Gantry Operator. He was suspended from service for sixty (60) days on June 5, 1979 after an investigation. The charge against the Claimant was "... failure to comply with Rule 79 of the Louisville and Nashville Railroad Company Mechanical Department Safety Rules, effective January 1, 1978, which resulted in you having a lost time personal injury".

Rule 79 reads, "A blue flag displayed at one or both ends of a locomotive car, or train, indicates that workmen are under or about it. When thus protected it must not be coupled to or moved. Each class of workmen will display the blue signals, and the same workmen alone are authorized to remove them".

The Employees on behalf of the Claimant assert that he has been treated discriminatorily in that he received a disciplinary suspension while other violators of the same rule have, in the past, been treated less severely.

Further, it is their contention that other violations of safe working practices were contributory causes in this instance and should therefore mitigate the offense.

The Board's finding is to the contrary. The Claimant was guilty by his own admission of failing to observe Rule 79. On Sheet #10 of the hearing transcript the Claimant is questioned by Mr. Padgett:

"Q. Are you familiar with Rule 79 of these safety rules?

A. I am familiar with the part that blue flags go up 90% of time since they put the blue flags out, the part about putting in the window, I am not familiar with that.

Q. ... Did you display a blue flag on the locomotive you were servicing at the time of the accident?

A. I didn't put a blue signal on the locomotive, cause the way we always do it as we watch blue light flashing on track."

The Rule is clear, unambiguous and not subject to misinterpretation. It says that each class of workman will display the blue signals. This the Claimant admits he did not do.

What the Carrier did or did not do with respect to other reputed violators in the past is not at issue and do not mitigate either the actions of the Claimant nor those of the Carrier. He was properly disciplined for the offense. Also the fact that other safety devices or work practices were not observed on the day in question cannot be cited as properly a claim for the Carrier to ignore this one.

Although the Claimant was properly disciplined, it is a well established principle that under such circumstances the penalty meted out should be corrective rather than punitive. In this case a sixty (60) day suspension seems unduly harsh. For this reason the Board will reduce the suspension to a period of thirty (30) days.

Accordingly the suspension will be upheld for a period of 30 days.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 9413
Docket No. 8911
2-L&N-FO-'83

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 16th day of March, 1983.