

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling Agreement when they unjustly disciplined Carman V. Vela starting July 28, and ending October 25, 1979.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman V. Vela for all wages lost starting at 10:00 A.M., July 28, 1979 and 9:59 A.M., October 25, 1979.

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.

After an investigation held on August 8 and 17, 1979, the Carrier suspended Claimant from service for ninety days. By notice dated July 29, 1979, Claimant was charged with failure to obey his supervisor's instructions on July 28, 1979.

At the investigation, the Diesel Supervisor testified that he ordered Claimant to place blue flags at the north end of Tracks Two and Three in the Harlingen, Texas train yard. A short time later, Claimant asked the Supervisor to provide him with transportation up to the north end. The Supervisor denied Claimant's request and told him that he had ample time to place the flags and to then perform his duties in the shop. According to the Supervisor, Claimant became angry and adamantly refused to set the flags. Immediately after the confrontation between Claimant and his supervisor, the Supervisor and the Terminal Manager verified that Claimant had not placed the blue flags at the north end of the two tracks.

The Organization contends that Claimant had two reasonable justifications for refusing to comply with his supervisor's orders. The Organization submits that the Supervisor instigated the entire problem simply because he denied Claimant a ride to the north end (especially when the temperature in South Texas was over 100 degrees). Second, the Organization asserts the order was patently unreasonable

since Claimant was the only on duty carman performing work at that time. Blue flags were, therefore unnecessary. Lastly, the Organization alternatively argues that even if Claimant committed the charged offense, the penalty was excessive in view of his twenty-eight years of fine service.

The Carrier claims the record contains substantial evidence demonstrating that Claimant disobeyed the direct orders issued by the Diesel Supervisor. According to the Carrier, the Supervisor gave Claimant more than enough time to perform the assigned task. Finally, the Carrier argues that a ninety day suspension is lenient when compared with the seriousness of Claimant's offense.

We find substantial evidence in the record that Claimant absolutely refused to follow his supervisor's orders. The Diesel Supervisor expressly told Claimant that he could take as much time as he needed to place the flags. If Claimant believed he was entitled to be transported to the yard's north end, he should have first complied with the Supervisor's instruction and then implemented the contract grievance procedure to redress any unreasonableness on the Carrier's part.

The blue flag protection rules are designed to safeguard the health and welfare of all shop employees (including Claimant). He should be aware, based on his many years of service, that he must strictly adhere to all safety rules even when following the safety rules causes him some inconvenience.

This Board concludes that the discipline has served its purpose and that due to Claimant's length of service, the penalty was excessive. We will, therefore, reduce the suspension by thirty days. Claimant should be compensated for the thirty days at the rate in effect when he served the suspension.

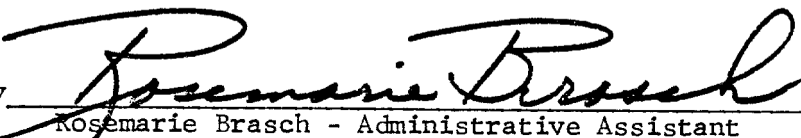
A W A R D

Claim sustained in accordance with the Findings.

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 13th day of April, 1983.