

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the provisions of the current agreement Rule 11 in particular has been violated account Sheet Metal Wk. (Plumber) Silvio Vitiello was given formal investigation, held on February 28, 1979, resulting in discipline being rendered, in that he was assessed ten (10) days suspension deferred for a period of six (6) months.
2. That because of such discipline being rendered, that the Carrier be required to remove that discipline from Claimant S. Vitiello's record.

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.

Sheet Metal Worker (Plumber) Silvio Vitiello was charged with failure to protect company property in an emergency situation on February 12th and 14th, 1979 by refusing to work overtime. An investigation was held on February 28, 1979, and on April 15, 1979, Claimant was assessed a ten (10) day suspension deferred for a period of six (6) months.

A review of the record before this Board establishes that although the Claimant rejects the characterization of "refusal" to respond, he did not in fact follow the directions of his foreman on two separate occasions to go to certain sites to perform repairs and in both instances, the foreman's call to report came towards the end of shift; i.e., to respond would mean spending time beyond his normal work hours. The record contains conflicts in testimony between the foreman, and grievant and two co-workers. However, as has been held so many times before, this Board as an appellate forum has no jurisdiction to resolve matters of credibility. Moreover, allegations that there was no emergency or that others were available but were not asked to work overtime do not gainsay that Claimant, a long time experienced employee, should have worked as directed and then grieved. There was substantial evidence to sustain the Carrier's decision to discipline Claimant, and the penalty of a ten day suspension deferred for six (6) months has become, with the passage of time, a moot issue.

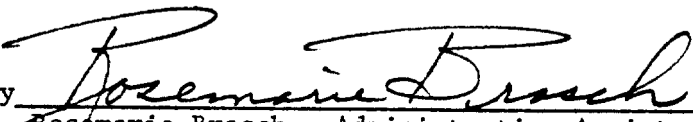
A W A R D

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 13th day of July, 1983.