

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (United Steelworkers of America, AFL-CIO
(The Lake Terminal Railroad Company

Dispute: Claim of Employees:

(1) On April 24, 1981, employee J. T. Pando was disciplined by the Carrier after an investigation conducted on April 20, 1981. The Carrier charged Mr. Pando with violation of Rule (B), Paragraph (2) of The Lake Terminal Company Book of Rules. The Carrier assessed a ten (10) day suspension and held Mr. Pando out of service beginning on May 4, 1981 and ending on May 14, 1981.

(2) It is the position of the Union that Mr. Pando was improperly and unfairly disciplined and requests that Mr. Pando be compensated for all wage loss incurred by the suspension noted above, under the provisions of Rule 7, Section 3 of the controlling Agreement.

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 employes 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.

This is a companion case to Award No. 9813 which sets out the fact-situation before and after the incident cited herein, which was referenced in the aforementioned case. Specifically, this case relates to the statement attributed to the Claimant (as found in Award No. 9813) that he went to a hospital emergency room for treatment the night after the alleged back injury (March 23, 1981) at which time he was X-rayed and received heat treatment. Such statement was purportedly made by the Claimant to a Carrier official as well as the Medical Unit; a notation on the Claimant's medical treatment record indicated his statement was specific and made as a direct quote in this regard. For reasons not set out in the record, the Carrier had doubts as to the Claimant's alleged appearance at the hospital emergency room and had its Medical Unit contact hospital officials and check the veracity of such statement. The hospital alleged that no record of the Claimant being treated could be found. According to the Claimant, while he conceded that he told the Carrier official he had gone to the emergency room for treatment, he did not say he actually got such treatment;

instead, he contends he went to the hospital, waited for a while and went home without having been treated. As a result of the investigation the Claimant was charged with a violation of Rule B, Paragraph 2 relative to dishonesty and assessed a ten-day suspension -- from May 4 through May 14, 1981. The Organization contends the Carrier's actions were arbitrary and capricious, malicious and unreasonable.

We must raise the question as to who would stand to benefit from the alleged events herein; clearly, only the Claimant stood to do so. Also, the Carrier's contention that the Claimant made the same basic statement to officials in the medical unit -- which were set out as a direct quote -- went unrefuted by the Organization. In sum, we must conclude that the Carrier's version of the Claimant's statement(s) concerning the hospital visit to be more accurate. And, while we might be moved to conclude that the extent of suspension was excessive under other circumstances, we cannot look past the obvious intent of such apparently false utterance: to escape his work obligation. As a result we find no basis to disturb the Carrier's assessment of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984