

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(System Council No. 7
(
(Boston and Maine Corporation

Dispute: Claim of Employes:

1. That under the current Agreement the Boston and Maine Corporation has unjustly disciplined Electrician Roger A. Wilson when it assessed him twenty-four (24) demerits to be entered in his service record.

2. That accordingly the Boston and Maine Corporation be ordered to vacate all the discipline and to expunge Electrician Roger A. Wilson's service 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 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.

The events that led to this dispute occurred on October 12, 1981, when the Claimant, an Electrician and member of a crew of three who were driving to their work site in a Company vehicle, picked up a passenger who was not employed by the Carrier. Subsequently, an accident occurred involving only the Company vehicle, which was not being operated by the Claimant. There were no citations issued by police authorities to the driver of the vehicle.

Following the accident, the Claimant completed a personal accident report at Carrier's request. Later, the Carrier charged the Claimant with a violation of its rules because he did not report the presence of the unauthorized passenger in the Company vehicle and because he filed an inaccurate accident report (since he omitted any mention of the passenger). Following an investigative hearing, the Claimant was found guilty of the charges and assessed twenty-four demerits to be entered on his service record.

The Organization, on the property, raised the contention that the Claimant was denied a fair and impartial trial, essentially with regard to the Hearing Officer's role and the Carrier's failure to conduct separate trial. The Organization also holds that the Claimant was not aware of the Rule that required him to report violations of Rules (i.e., the presence of the unauthorized passenger) and further, it contends there was no evidence to show that the personal injury report completed by the Claimant contained anything which was untrue.

In its submission to the Board, the Organization also raised certain new procedural contentions, particularly with respect to the demerit system, which have not been considered by the Board, since they were not raised on the property. Concerning the other procedural issues, we find no showing that the investigative process prejudiced the Claimant.

The Carrier's conclusion that the Claimant should have known it was unacceptable to allow a person not employed by the Carrier to be a passenger in the Carrier's vehicle, irrespective of his awareness of the Rule, is not an unreasonable one.

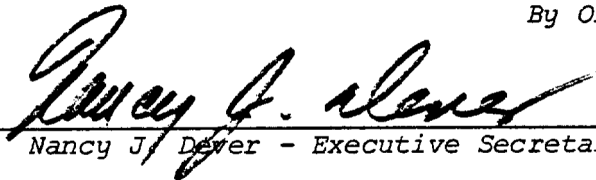
However, the Board finds that the Carrier did not give sufficient weight to the many mitigating factors affecting the Claimant's particular circumstances. In this respect, the Carrier acknowledges that the Claimant neither arranged to transport the passenger, nor was he responsible for ensuring that she was not transported. Moreover, the Claimant, who was aware that the Gang Leader and his coworker also had filed accident reports, and who had no control over the events that led to the dispute, would have had no reason to believe that the senior members of the crew had not disclosed all the pertinent facts. His omission may have been mere oversight under those specific conditions. The Claimant was junior to the others in length of employment. Undisputed testimony shows that the Claimant did not know the name of the unauthorized passenger. And, lastly, the record does not show specifically to what the Claimant responded when he completed the accident report, for the actual report is not a part of the record. Consequently, given these mitigating elements, the carrier's conclusion to assess discipline unduly strains the concept of fairness implicit in the disciplinary provisions of the contract.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1984