

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 Employees:

1. That under the current Agreement the Boston and Maine Corporation has unjustly suspended Lineman A. A. Sciarappa fifteen (15) working days without pay and entered thirty-six (36) demerits in his service record; made effective by notice of discipline dated November 18, 1981.

2. That accordingly the Boston and Maine Corporation be ordered to restore Lineman A. A. Sciarappa to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Lineman's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and to expunge his 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 employees or employees involved in this dispute are respectively carrier and employees 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, a Lineman who also was the Gang Leader of a crew of two other employees, while driving with the other crew members to their work site in a Company vehicle, picked up a passenger who was not employed by the Carrier. It happened that an accident involving only the Company vehicle occurred. There were no citations issued by police authorities to the driver of the vehicle who, at the time of the accident, was the Claimant. After the accident, the Claimant completed a personal accident report at the request of the Carrier. The Carrier charged that the Claimant violated two of its Rules, the first related to the presence of an unauthorized passenger in the vehicle at the time

of the accident, and the second related to his failure to report the presence of the passenger in his accident report. Following an investigative hearing, the Claimant was found guilty of the charges and was suspended fifteen (15) working days without pay and assessed thirty-six (36) 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 on the ground of the Hearing Officer's role and the failure of the Carrier to conduct a separate trial concerning the Claimant only. The Organization also holds that the Claimant was not aware of the Rule which required him to report violation of the Carrier's rules (i.e., to report the presence of the passenger) and, further, it maintains that there was no evidence to show that the Claimant stated anything which was untrue on the face of the personal injury report completed by him.

In its submission to the Board, the Organization raised certain new procedural contentions, particularly with respect to the demerit system, which we did not consider, because they were not raised on the property. Furthermore, we find no showing that the investigative process prejudiced the Claimant's interests.

With respect to the Claimant's knowledge of the Rules, the evidence discloses that he had not been instructed in the pertinent Rule. However, his testimony provides sufficient evidence showing that he was aware of the fact that the presence of the non-company passenger in the vehicle was contrary to the Carrier's Rule. Moreover, the Carrier's conclusion that the Claimant should have known it was unacceptable to allow a non-employee to be a passenger, irrespective of Rule knowledge, as stated in our Award 9838, is not an unreasonable one.

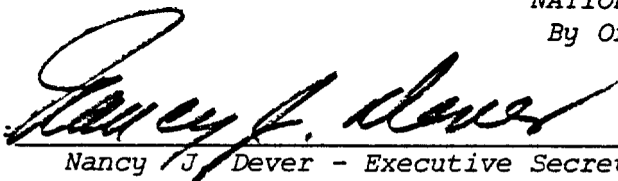
Therefore, given his role as the Gang Leader and the other facts and circumstances of record, with respect to the Claimant's actions, the Board finds no basis to disturb the penalty assessed by the Carrier.

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 4th day of April, 1984