

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation (Amtrak) unjustly suspended Electrician Caesar Vega ten (10) working days held in abeyance six (6) months, effective July 23, 1981, causing him to be held from service from about 9:45 AM July 2, 1981 until returned to service 8:00 AM July 3, 1981.
2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Caesar Vega 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 Electrician'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 employe 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.

Claimant, Caesar Vega, was suspended by the Carrier for a period of ten working days, held in abeyance for six months, and was held out of service for six hours and fifteen minutes on July 2, 1981, for allegedly not completing an assignment he was given by his General Foreman.

The evidence shows that Vincent R. Delli Paoli has been a General Foreman with the Carrier for four years. Although the Claimant, Caesar Vega, was not ordinarily under Delli Paoli's supervision, he was assigned to work under Delli Paoli on July 2, 1981. Delli Paoli gave Claimant the assignment of dropping the condenser unit from M. U. 1456. Claimant did not complete the job and instead went to see a

Mr. Pastor. Delli Paoli stated that he told the Claimant, repeatedly, to return to work and finish his assignment, but Vega disregarded his orders. According to Delli Paoli, the Claimant made a hand gesture at him and told him to "take a walk."

As a result of Claimant's action, General Foreman, Delli Paoli gave Claimant his notice of being held out of service for the balance of his shift and Claimant was also served with a ten-day deferred suspension. Rule 1 states that "employees will not be retained in service who are insubordinate or quarrelsome ..." Claimant was charged with violating that rule.

Claimant contends that he was unaware that Mr. Delli Paoli was filling in for his regular General Foreman, Mr. Joe Tursi, on July 2, 1981. Furthermore, Claimant stated that he was told that Mr. Pastor wanted to see him on July 2, 1981, and that he believed that his General Foreman had given him permission to see Mr. Pastor.

The Claimant called witnesses who testified that they were not aware that Delli Paoli was the supervisor on July 2, 1981; that Delli Paoli was not in a good mood and was disrespectful in the way he assigned work to employees; that they heard Claimant's Foreman tell Claimant that Mr. Pastor wanted to see him; that they did not hear Claimant utter insulting or disrespectful words toward his General Foreman nor did they see Claimant make gestures toward him; and that the job could not have been completed that day anyway.

Finally, it was argued by the Organization representative that this is the first time such incident involving Mr. Vega in his seven years of employment with the Carrier and that the General Foreman acted prematurely in removing Mr. Vega from service and that Mr. Vega did not react badly even though the General Foreman approached him in a provocative manner.

The Organization also argues that the Carrier failed to meet the notice requirements of Rule 23(b) which requires that the Claimant be given written notice of the charges against him in advance of the investigation. The Organization argues that the notice given by the Carrier lacks specification and that Claimant did not receive a fair hearing because he was not adequately apprised of the charges against him by the Carrier. Moreover, the Organization argues that the hearing was not fair and impartial because the investigating officer's statements show that he had prejudged the Claimant.

The Board finds that the Claimant testified that he was willing to proceed. Moreover, the Board finds that the charges set forth the exact rule violation and the date and time of the incident which the Carrier had to prove. Therefore, the Claimant was adequately advised of the charges against him. The Claimant and his representative were present throughout the proceeding and were given the opportunity to present evidence and witnesses in Claimant's defense as well as cross-examine the Carrier witnesses. There is no evidence of any impartiality or bias on the part of the investigating officer. Moreover, the Claimant himself stated that he had no comments or criticisms on the way the investigation had been conducted.

It is a well-defined maxim that the parties to a dispute may not participate in a proceeding without raising any objection and then after the proceeding is concluded be heard to complain relative to the propriety of the proceeding. (See Second Division Awards Nos. 7153, 7452, 7009. Hence, the

Board finds that the Claimant was afforded a fair and impartial hearing in conformance with the requirements of the Rules Agreement.

The Board also finds that the Claimant was given a proper assignment by the General Foreman, Delli Paoli, and had the obligation of following it. Failure to comply with a supervisor's instructions is a "cardinal sin" in the railroad industry as well as in other industries and often leads to dismissal. However, the Claimant also had been told to talk to Mr. Pastor and was thus faced with having to do two things at the same time. The Claimant should have chosen to follow the General Foreman's instructions to finish the job he was performing. Claimant's failure to follow the General Foreman's instructions should give rise to some penalty. However, discharge was too severe under these circumstances. The Carrier argues that it used its discretion and imposed a lighter penalty so that the employee would see the error of his ways without incurring severe financial hardship. The Board finds the ten-day suspension assessed by the Carrier to be appropriate.

However, the Board also finds that there was no reason for the General Foreman to hold the Claimant out of service for the balance of his shift on July 2, 1981, as the Claimant did not exhibit any violent behavior and there was no reason to fear for the safety of the other employees or worry about the orderly administration of the other employees. In fact, the job might have been completed that day if Claimant had not been sent home. If the Carrier believed that the ten-day deferred suspension was the appropriate discipline, then that is all that the Claimant should have suffered. The six hours and fifteen minutes of being held out of service on July 2, 1981, was not justified and was unreasonable and capricious.

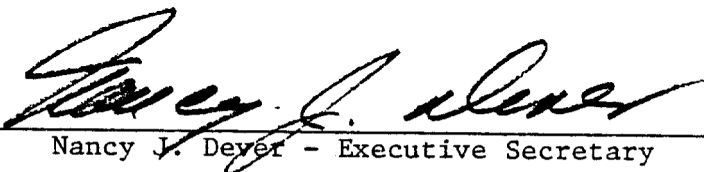
The claim is sustained as to the Claimant being unjustifiably held out of service on July 2, 1981. The Claimant should be reimbursed for the six hours and fifteen minutes, at his straight-time rate, that he was denied as a result of being held out of service for that period. The claim is denied as to the ten-day deferred suspension and that discipline stands.

A W A R D

Claim sustained in accordance with the Findings.

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