

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

( International Brotherhood of Electrical Workers  
( System Council No. 7  
Parties to Dispute: (  
( Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Electrician T. G. Weinzierl three (3) days, effective January 21, 1981.

2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician T. G. Weinzierl 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 Electricians' 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 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 Claimant was assessed three (3) days deferred suspension due to his failure to protect his assignment from noon until the end of his tour of duty, and for leaving the Carrier's property without securing permission at noon, on November 28, 1980.

The Organization raises a procedural issue which must be addressed before the merits are considered. After carefully examining the record, the Board concludes that the failure to have two Superintendents present at the trial did not deprive the Claimant of a fair and impartial trial. The record fails to disclose that the Locomotive Shop Superintendent had any personal involvement in the episode which led to the discipline of the Claimant. The Carrier infers that by bringing charges against the Claimant, the Locomotive Shop Superintendent merely performed

an administrative task on behalf of the Carrier. The failure to have the Gang Foreman at the trial shall be considered in the discussion on the merits of the dispute. However, it can be stated at this juncture that the Claimant was not deprived of a fair and impartial trial as required under Rule 6-A-1(a) and was not prejudiced by the failure to have the aforementioned Supervisors present at the trial.

Turning to the merits of the dispute, the record warrants the conclusion that the Claimant left the Carrier's property at noon on November 28, 1980, without securing permission from supervision. At trial the Claimant testified that General Foreman Berry said that he could leave to go home to watch the "Penn State" football game, and then he admitted "but he (General Foreman Berry) wasn't giving me permission to leave but denying me permission." Furthermore, the Claimant requested permission to leave from his immediate Supervisor who "referred" him to General Foreman Berry. Before leaving the Carrier's premises, the Claimant told his immediate Supervisor, that he "had talked" to General Foreman Berry to which his immediate Supervisor replied "Okay". In reply to his immediate Supervisor's comment, the Claimant had an obligation to elaborate on his discussion with General Foreman Berry. By failing to do so, the Claimant misled his immediate Supervisor. Thus, the Carrier infers that the Claimant's immediate Supervisor reasonably believed that General Foreman Berry granted the Claimant permission to leave by the Claimant's cryptic remark that he "had talked" to him. It should be noted that the Claimant's testimony of the discussion with his immediate Supervisor rendered unnecessary the need to have his immediate Supervisor testify at the trial.


Finally, it should be noted that even if the Carrier acted in an arbitrary, capricious and discriminatory manner in permitting only those employees who possessed tickets to the Penn State game to leave the premises, it was the Claimant's responsibility to remain on the job and pursue his claim under the grievance procedure.

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 16th day of May, 1984