

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

- No. 1: Restore the claimant (Mr. Albano) to service with all seniority rights.
- No. 2: Compensate claimant for all time lost in addition to an amount of 10% per annum compounded annually on the anniversary date of claim.
- No. 3: Make claimant whole for all vacation rights.
- No. 4: Re-imburse the claimant and/or his dependents for all medical and dental expenses incurred while employee was improperly held out of service.
- No. 5: Pay to the claimant's estate whatever benefits the claimant has accrued with regards to life insurance for all time claimant was improperly held out of service.
- No. 6: Pay claimant for all contractual holidays.
- No. 7: Pay claimant for all contractual sick pay.
- No. 8: Pay claimant for all jury duty and all other contractual benefits.
- No. 9: Pay claimant for all overtime lost during discipline.

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.

Claimant, at the time of the occurrence giving rise to the claim herein, was employed by the Carrier as a Sheet Metal Worker in the Locomotive Repair Shop at Tampa, Florida. Claimant had about one and one-half years of service.

According to the Carrier, at about 8:20 A.M., July 22, 1981, Assistant Department Foreman J. L. Ingrams instructed claimant to go to units 4762 and 4632 and put MU (multiple unit) and brake pipe hoses on those units. Claimant did not promptly perform the work as instructed, and was observed at 8:50 A.M. and 9:05 A.M., at a location described "at ramp of Station 7." At that time it was noticed by the Assistant Department Foreman that the hoses had not been placed on the units as previously instructed. Claimant stated that he was on his break. The foreman then instructed the claimant to get up and "do the job now." At 9:30 A.M. the foreman again noticed that the hoses had not been applied and that the claimant was not on the job. At 9:58 A.M. claimant was observed coming from the enginehouse and when asked by the foreman where he had been, claimant is reported to have replied in a vulgar and threatening manner. On the same date, July 22, 1981, claimant was notified to attend investigation:

"You are hereby directed to appear for a formal investigation which will be conducted in the office of the Shop Superintendent at Tampa, Florida, at 9:30 A.M., August 18, 1981, to develop the facts and place your responsibility, if any, in connection with failing to work diligently during shop hours, wilful neglecting your assignment and uncivil conduct toward your supervisor on the morning of July 22, 1981, in the Uceta Heavy Locomotive Repair Shop.

You are charged with violation of that Part of Rule 1 which reads 'every employee is expected to yield a willing and cheerful obedience thereto. To enter or remain in the service is an assurance of willingness to obey the rules and to work diligently during shop hours.' and that part of Rule 12 which reads 'uncivil conduct...wilful neglect,' of the Rules and Regulations of the Mechanical Department of the Seaboard Coast Line Railroad Company.

Your personal record will also be reviewed at this time.

You may have representation if you so desire in accordance with the agreement under which you are employed, and you may arrange to have present any witnesses who have knowledge of this matter."

The charge was over the signature of the General Foreman.

Rules 1 and 12 of Rules and Regulations of the Mechanical Department, referred to in the notice of July 22, 1981, read in part:

"Rule 1:

The rules and regulations as well as general and special orders issued from time to time are designed to insure the proper care of the Company's property and the interest of the Company and its employees. Every employee is expected to yield a willing and cheerful obedience thereto. To enter or remain in the service is an assurance of willingness to obey the rules and to work diligently during shop hours. Spoiling or wasting of material will be considered sufficient cause for discipline.

"Rule 12.

Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, wilful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal."

The investigation was postponed and conducted on August 25, 1981. A copy of the transcript of the investigation has been made a part of the record. On October 9, 1981, claimant was assessed discipline of fifteen working days beginning Monday, October 12, 1981, and continuing through October 30, 1981.

In the investigation claimant's representatives objected to claimant being charged with violation of Rules 1 and 12 of Rules and Regulations of the Mechanical Department as such rules were not negotiated rules. It is well settled that the Carrier may promulgate rules for the conduct of employes unless they contravene the terms of a collective bargaining Agreement. See Award No. 7161 and other awards cited therein.

The Carrier contends that the task of installing the hoses as instructed, should have taken no more than twenty minutes. In the investigation the claimant stated the "the job was done before 11."

The investigation contains substantial evidence that claimant did not diligently perform his duties on the morning of July 22, 1981. There was a direct conflict between the testimony of the Assistant Department Foreman and claimant as to the response claimant made to the foreman at about 9:58 A.M. It is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. The Board may not properly reverse the Carrier's determination because of conflicts in testimony.


On the record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984