

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

Claim in behalf of Machinist T. R. Brittain at the pro rata rate of pay commencing April 7, 1981 at 12:01 PM through 12:01 PM May 8, 1981, on his regular assignment due to the Carrier's evasive, unequal application of a Company rule, contrary to the intent and purpose of the controlling Agreement effective August 1, 1969. This is to include the removal of all references of this incident from Mr. Brittain's personal file.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee 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.

This is a claim for time lost by Claimant Machinist T. R. Brittain for a thirty (30) day suspension from service following a formal investigation held April 13, 1981 on the charge that Claimant failed to comply with instructions issued on April 6, 1981 by Master Mechanic J. G. Dunlap and Assistant Master Mechanic J. S. Grey. Claimant was removed from service on April 7, 1981, pending formal investigation.

The Organization alleges that the formal investigation was procedurally defective because Claimant was improperly suspended prior to formal investigation; was not advised of the precise charge; and was not given an opportunity to obtain the presence of witnesses pursuant to Rule 24 of the Controlling Agreement. The Organization further asserts that the charge proffered against Claimant is based on a rule that has been discriminatorily enforced by the Carrier.

The record in the instant case discloses that Claimant by his own admission, had been repeatedly instructed to wear his hard hat, and failed to do so despite the direct orders given by two supervisors. The evidence further reveals that Claimant did secure statements from fellow employees to assist him at the formal investigation despite the fact that he was off Carrier property during the period of his suspension. There is no evidence in the record to suggest that Claimant did not understand or was misled by the charge preferred against him by the Carrier.

Form 1
Page 2

Award No. 10061
Docket No. 10074
2-MP-MA-'84

With that as factual background for the events in question, the Board finds that the Organization's procedural objections are without merit. First, numerous awards have sanctioned pre-investigation suspension, where, as here, the Controlling Agreement specifically so provides. (See Second Division Awards Nos. 3828, 6518, and 3310).

Second, while it is axiomatic that in discipline claims such as this, the Carrier is required to frame the charges against an employee in such a manner that he is able to prepare an adequate defense, it is nevertheless apparent that the notice of the charge given Claimant conformed to that criterion. (See Second Division Award No. 7103). Claimant clearly understood the charge, since he secured the presence of witnesses who testified on his behalf at the hearing relative to the matter under investigation.

Third, there is no evidence to suggest that Claimant was denied a fair and impartial hearing. Rule 24 of the Controlling Agreement gives an employee the right to secure witnesses in his own behalf, but the rule does not require that the employee do so on the Carrier property.

Herein, Claimant was afforded the opportunity to, and did in fact, present witnesses and other record evidence at the formal investigation. Therefore, the Board finds that there is nothing of substance in the record to warrant a finding of a prejudicial procedural defect.

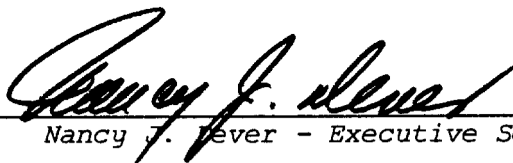
With regard to the merits, the evidence of record demonstrates that the Carrier met its burden of proof as to its charge against Claimant with substantial probative evidence. The discipline imposed was not arbitrary or excessive. Claim denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.