

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

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the Controlling Agreement, in particular Rule 32, when Electrician L. A. Perry was suspended for five (5) days commencing September 1, 1981, and ending September 5, 1981, at St. Petersburg, Florida.
2. That accordingly, the Seaboard Coast Line Railroad Company compensate Electrician L. A. Perry in the amount of eight (8) hours per day at the pro rata rate for the period commencing September 1, 1981, through September 5, 1981, and Claimant's personal record be cleared of the investigation.

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 is employed by the Carrier as an Electrician at its facility located at St. Petersburg, Florida. He was charged by the Carrier with wilfully damaging and attempting to destroy a portion of the speed tape which he was instructed to remove from Locomotive Amtrak-640 on June 6, 1981. In addition, the Carrier asserted that he attempted to conceal such "facts" from the Carrier's officers on that day which was in violation of Rule 12 of the Rules and Regulations of the Mechanical Department. Rule 12 provides:

"*** making false statements or concealing facts concerning matters under investigation."

On June 6, 1981, the Claimant was asked by Trainmaster Herring if he knew how to remove a speed tape from a derailed train. The tape was to be used in an investigation concerning the derailment. The Claimant indicated that he knew how to remove the tape and was instructed to do so. After performing the assignment, he gave the tape to Trainmaster Herring who questioned him as to what happened to the portion of the tape which recorded the speed of the train. The Claimant advised Trainmaster Herring that "was all" the tape and when questioned further by Master Mechanic Brigman he produced the missing portion of the tape from his shirt pocket.

After carefully examining the record, the Board concludes that the Claimant did not make a false statement or conceal "facts concerning matters under investigation" which is provided in Rule 12 of the Rules and Regulations of the Mechanical Department. The piece of tape which the Claimant took from his pocket was the excess piece which is routinely torn off the wind-up roll in order to insure that the roll winds smoothly and does not cause an erratic "speed" reading. The record does not disclose any deception by the Claimant. His momentary and inadvertent failure to recall the excess piece which he tore off the wind-up roll does not constitute a false statement or indicate that he concealed facts. Moreover, the fact is that he did submit the piece of tape to Master Mechanic Brigman.

Accordingly, the Carrier is to compensate the Claimant eight (8) hours of pay at the pro rata for the period commencing September 1, 1981 through September 5, 1981 and that his record be cleared of the investigation.

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 17th day of October 1984.