

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Rules of the current working Agreement and associated Rules, namely Rules 32, 34, Agreement dated October 1, 1952, when it unjustly assessed Carman A. W. Kelley a thirty (30) day deferred suspension on November 3, 1981, as a result of formal investigation held on September 29, 1981, at Buffalo, New York.
2. That the Norfolk and Western Railway Company be ordered to remove from Mr. A. W. Kelley's service record any and all reference to formal investigation held on September 29, 1981 and thirty (30) day deferred suspension assessed on November 3, 1981.
3. That, should Mr. A. W. Kelley lose any time due to the thirty (30) day deferred suspension assessed on November 3, 1981, the Norfolk and Western Railway Company be ordered to pay Mr. A. W. Kelley for all time lost, return him to service with seniority rights unimpaired, make him whole for all vacation rights, make him whole for all health and welfare and insurance benefits, make him whole for pension benefits, including Railroad Retirement and Unemployment Insurance, and make him whole for any other benefits that he would have earned during the time he was held out of service.
4. That the Norfolk and Western Railway Company be ordered to apologize to the Brotherhood Railway Carmen of the United States and Canada, New York Lodge 694, for its harassment of its Local Chairman.

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 has been employed by the Carrier for thirty-two (32) years at its facility known as "Bison Yard", in Buffalo, New York. During 1981, when the events giving rise to the instant claim occurred, the Claimant was employed as a Carman, while serving as Local Chairman.

The Claimant was charged with the unauthorized removal, use and reproduction of various Carrier documents. As a result of a formal investigation that was held on September 29, 1981, the Claimant received a thirty (30) day deferred suspension.

The most serious of the several procedural objections raised by the Organization, concerns the multiple roles filled by General Foreman Bishop in the handling of the instant claim. General Foreman Bishop served as the charging officer. The formal investigation that was held on September 29, 1981 was prompted by the charges he set forth in his letter to the Claimant dated September 2, 1981. He was the sole witness at the investigation to provide testimony on behalf of the Carrier. On November 3, 1981, General Foreman Bishop notified the Claimant that as a result of the formal investigation, "a thirty (30) day deferred suspension" was "assessed" against his "service record". The Claimant filed an appeal on December 31, 1981 from the discipline which had been imposed against him. On February 25, 1982 General Foreman Bishop rejected the appeal and affirmed his initial assessment of discipline.

General Foreman Bishop's major role in the investigatory process, his decision assessing discipline and his subsequent rejection of the Claimant's appeal from his decision constitute a fatal procedural flaw which makes it unnecessary to consider the merits. Rule 32, in relevant part, provides for appeal to "higher officials designated to handle such matters." The appeal in the instant case was not to a higher designated official; it was to the same person who rendered the decision after reviewing the record of the investigation.

Besides the Carrier's violation of Rule 32, the investigatory, judgmental and appellate roles were so intertwined as to make a nullity of both the discipline assessed and the initial step of the appellate process. (Second Division Award No. 7921.) Accordingly, the Carrier is to remove from the Claimant's service record any reference to the formal investigation held on September 29, 1981 and the thirty (30) day deferred suspension assessed against him.

Form 1
Page 3

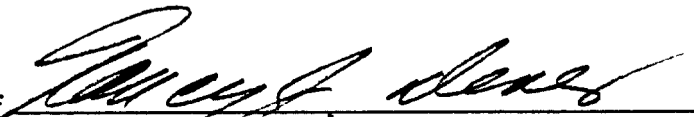
Award No. 10146
Docket No. 10183
2-N&W-CM-'84

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 31st day of October 1984.