

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10169
Docket No. 10245
2-MNCA-EW-'84

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Metro-North Commuter Railroad
(Consolidated Rail Corporation)

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Harmon, N.Y. Electrician C. West from service 15 days, effective June 11, 1981, causing him to be held from service 10 days.
2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician C. West 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 Electrician's 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 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.

Claimant, C. West, is employed as an electrician at Carrier's Harmon, New York, facility.

The Claimant was assessed discipline of 15 days' suspension from service effective June 11, 1981, after a disciplinary hearing in connection with the following charges:

1. Being away from your job assignment at approximately 1:30 a.m. on April 25, 1981, wherein you were found sitting in the Harmon lunchroom with playing cards in your hand.
2. Failure to devote yourself exclusively to the Company's service while you were on duty on April 25, 1981, at approximately 1:30 a.m., wherein at that time you were found in the Harmon lunchroom with playing cards in your hand and a deck of cards on the table in front of you which is in violation of the General Rules for Conduct of Employees in the M of E Department.

Following an appeal hearing, the discipline was reduced solely on a leniency basis to ten days' suspension.

The Organization argues that the Carrier has not met the requirement of finding the Claimant guilty exactly as charged. This argument is based in part on the testimony of Mr. E. Walz, Supervisor of Mechanical Equipment, who testified that he did not see cards in the Claimant's hand as the charges allege.

The Organization bases this argument on Rule 6-A-3(a) which states:

"An employee who is accused of an offense, and who is directed to report for a trial in connection therewith, shall be given reasonable advance notice, in writing, of the exact offense for which he is to be tried and the time and place of the trial."

The Organization further contends that the trial was conducted in an overbearing manner and was not fair and impartial, as testimony which may have exonerated the Claimant was suppressed; i.e., the hearing officer did not call two critical witnesses who were at the scene who could have presented evidence to support the Claimant's position.

Lastly, the Organization submits that the Carrier's disciplinary action in this case is unjust, lacking in good faith, arbitrary, and capricious, without basis, unreasonable and excessive.

The Carrier's position is that sufficient evidence was adduced through the transcript of the trial to prove Claimant's guilt as charged, at least as far as the charge of being away from his job assignment. The Carrier submits that the proven guilt of the offenses warranted the discipline assessed and that such discipline was neither arbitrary nor capricious and was commensurate with the seriousness of the offense.

The Carrier contends that Supervisor Walz's testimony that he saw Claimant seated at the lunch table with two other people, and playing cards, dealt in hands, were on the table, was sufficient to support its action. The Carrier contends that it proved the Claimant was absent from his work location and such absence was unauthorized. Moreover, Carrier argues that it has the right to expect and demand faithful and loyal service from its employees; and if it does not receive such service, it can discipline the employees in an effort to get improved performance.

This Board has reviewed all of the evidence and testimony in this case, and it finds that the Claimant admitted that he was in the lunchroom at 1:30 a.m. on April 25, 1981, and that the lunchroom is not part of his general job assignment area. Hence, we conclude that he was improperly away from his work area and, therefore, in violation of the rules with which he was charged. We also conclude that the charges were specific enough to charge Claimant for being away from his work station.

Although Claimant states that he was in the lunchroom on his way back from obtaining a print from his locker, the hearing officer did not accept that explanation for Claimant's activity and found Claimant guilty as charged. The investigating officer found that the Claimant was supposed to be in the shop repairing cars. This Board will not set aside the investigating officer's findings of the credibility of witnesses.

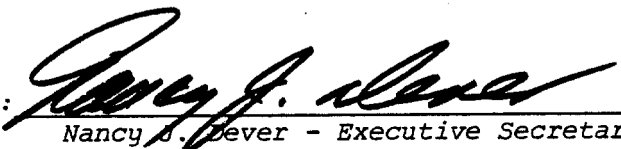
The Carrier has already reduced the discipline from a 15-day to a 10-day suspension. We see no reason to take any further action to reduce the penalty.

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 5th day of December 1984.