

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated the controlling Agreement, namely Rule 29, when Carman Ernest B. Ford was suspended for a period of sixty (60) days ending October 27, 1982.
2. That accordingly, the Washington Terminal Company be ordered to compensate him in accordance with Rule 29, to be reinstated with his seniority rights unimpaired and compensated for his net wage loss, if any, resulting from said suspension or dismissal.

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.

On the evening of October 28, 1982, Claimant Ernest B. Ford was found by one of the Carrier's Foremen seated on top of a tractor's steering wheel with the motor running. As a result of Claimant's behavior which followed, he was charged with disorderly conduct (a violation of Rule "K"), and participating in unnecessary activity (a violation of Rule "N").

The Organization concedes that the Claimant was in a "temporarily distraught frame of mind", but asserts that the Carrier failed to meet its burden of proof as to the charges, and that the sixty (60) day suspension was not warranted by the evidence. It is the Carrier's position that the Claimant received a fair and impartial hearing, and that the evidence adduced at the time of hearing fully substantiated the charges. The Carrier has included within its Submission, discussion pertaining to evidence and disposition of a second and later charge brought against the Claimant for insubordination. This Board finds that the issues raised as to this "second" charge are not properly before this Board, and shall not be considered in the disposition of the claims stated above.

A review of the entire record reveals Carrier has met its burden of proof on both violations. A Foreman for the Carrier testified that Claimant was seated upon the tractor using profane language, shaking his fist, crying and yelling out loud. The Foreman stated that Claimant appeared to be in an "unstable condition". This testimony was substantiated by two (2) Carrier Patrolmen who testified that when they approached Claimant he was sitting on the steering wheel with his feet on the engine, "ranting and raving" in an incomprehensible fashion.

Claimant testified that he could not recall operating a tractor at the time in question. He could not remember sitting on the steering wheel of the tractor, nor any of his actions as alleged by Carrier's witnesses. The record does show Claimant to have been under medical attention as the result of personal and family problems at the time the incident leading to these charges occurred.


The Board finds that the record contains sufficient, credible evidence in proof of the charges, and that the discipline assessed was neither arbitrary, unreasonable nor capricious.

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 16th day of January 1985.