

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

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

Dispute: Claim of Employes:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when Upgraded Carman L. P. Brown was assessed a five (5) day deferred suspension on August 8, 1979, which was reaffirmed by the carrier on September 24, 1979, as a result of investigation held August 24, 1979, at Brewster, Ohio.

2. That the Norfolk and Western Railway Company be ordered to remove the five (5) day deferred suspension from the service record of Upgraded Carman L.P. Brown.

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 upgraded Carman L.P. Brown was given a five day deferred suspension, after investigation, on a charge of inspecting and releasing NW 57431 on June 18, 1979, which was found to have pitted journals.

The Organization contends that the evidence in the record was insufficient to sustain the charge, and also that the investigation was procedurally defective. It challenged the manner in which the hearing was conducted and the fact that the Hearing Officer, M. L. Bruce, was Claimant's General Foreman. It also challenged the multiple roles of General Foreman T. Uliveto, who issued the letter, appeared as a Carrier witness, reviewed the transcript and assessed discipline, and denied the first appeal. Further the Organization notes that the second appeal, although denied by another Carrier Officer, was in substance identical to the Uliveto denial and does not appear to be the product of an independent review.

The Board rejects the contention that the hearing itself was procedurally defective. The question of the roles assumed by General Foreman Uliveto, however, must be addressed. The fact that Foreman Uliveto issued the charge is not in itself significant since issuing a charge does not necessarily imply a value judgment (Third Division Award No. 25046). What is troubling here is that the individual who served as Carrier's major witness to establish the (contested) fact that the pitted journals must have been present when the car was released from storage, also served as judge of the relative weight to be accorded to his own testimony, and then served as appellate judge.

The second appeal was denied with identical wording to that used by General Foreman Uliveto in denial of the first appeal. While the Board recognizes that successive reviewers may, as a matter of convenience, adopt the wording of prior responses (as indeed later appeals frequently include wording identical to that in earlier appeals), this convenience is not consistent with a perception of fairness in cases such as this one where all prior rulings have been issued by an individual combining the roles of witness and judge.

If the testimony of a particular Carrier witness is central to Carrier's case, some other officer ought to pass judgment, simply because no matter how hard the individual may strive to be objective, the procedure will lose credibility where, in view of his direct partisan role, the result appears to be a foregone conclusion.


This board has previously held that "Carrier combines such functions in one individual at its peril..." (Second Division Award No. 7119). Although in many cases multiple roles assumed by a Carrier Officer in the course of an investigation will not be found to deprive Claimant of due process rights, the particular roles assumed by a single individual in this case were such that, regardless of the merits, the result took on the appearance of a foregone conclusion and was on its face inconsistent with the impartial and objective investigation to which an employee is entitled under Rule 34.

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 13th day of March 1985.