

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the
(United States and Canada
(
(Maine Central Railroad Company

Dispute: Claim of Employees:

1. That the Maine Central Railroad, in violation of the controlling Agreement, namely Rule 32 and Addendum Rule No. 9 to Rule 86, did arbitrarily remove Carmen C. A. Hammonds and A. W. Sears from the regular assigned Waterville Relief Train List (wrecking crew) on April 15, 1982.

2. That accordingly, the Maine Central Railroad Company be ordered to restore Carmen C. A. Hammonds and A. W. Sears to the regular assigned Waterville Relief Train List and compensate them for all lost wages beginning April 15, 1982 until they have been restored to their positions on the Waterville Relief Train List.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 April 22, 1982, a formal hearing was held to determine the responsibilities, if any, of Carmen C. A. Hammond and A. W. Sears in connection with their alleged failure to comply with Rule 707. That Rule states the following:

"Employees must report for duty at the designated time and place. They must be attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from their duty, exchange duties with or substitute other in their place, without proper authority."

Following the hearing both Claimants were found guilty as charged. By notice dated April 28, 1982 both Claimants were permanently removed as members of the Waterville Relief Train under Addendum No. 9 of the Agreement. A claim in their behalf was handled on property up to and including the highest Carrier Officer designated to hear appeals without resolution. As such this claim is now before the National Railroad Adjustment Board.

The Organization contends on property that there was no violation of Rule 707. On the date of the alleged violation, April 13, 1982, Claimants were asked to fill an assignment on the Relief Train and the Foreman "excepted (sic) their excuses" and made substitutions on the Relief Train to the derailment at Nicolin, Maine.

The Carrier maintains that the record of the hearing documents clearly that both Carman Hammon and Sears refused assignment unless they could go in the cook car. The Carrier maintains that the Claimants are guilty as charged and their removal from the crew list of the Waterville Relief Train "was purely and simply as a result of their demonstration that they would not fulfill their obligation to the Carrier and, therefore, were considered unacceptable for this assignment".

The record before this Board documents that both Claimants did indeed set conditions for their accepting work with the Carrier. There is no Agreement support for such behavior. Clearly, the Carrier has Agreement support under Rule 707 to request and expect those in its employ to be available. This Board finds substantial evidence of record that Claimants Hammond and Sears were guilty as charged in that they did indeed absent themselves from duty in violation of the Agreement.

With respect to the quantum of discipline this Board has held many times that it may consider the imposed discipline with respect to the circumstances of each case and the Employee's past record (Second Division Award 6632; Third Division Award 23508). It has ruled that discipline should provide corrective effects (Second Division Award 6485, Third Division Awards 5372; 19037 inter alia.).

The record before this Board as developed on property shows the Claimants guilty as charged. While not denegrating guilt, both Employees have been with the Carrier over fifteen (15) years each without evidence in the record to establish progressive discipline. As such, this Board finds the discipline excessive in the instant case. Both Claimants should be restored to the regular assigned Waterville Relief Train List. They should not, however, given their rule violation, receive compensation for lost wages.

Form 1
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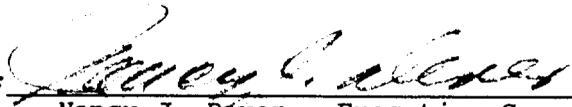
Award No. 10594
Docket No. 10371
2-MC-CM-'85

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 25th day of September 1985.