

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

Parties to Dispute: (The Brotherhood Railway Carmen of the United
(States & Canada, AFL-CIO
(
(Baltimore & Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the controlling Agreement when on the date of January 27, 1983, Carrier subjected Claimant, Carman, V. J. Dowling, Baltimore, Maryland, to an unfair and partial hearing, such hearing not held in accordance with the provisions of Rule 32 of the controlling agreement, that Carman Dowling was unjustly charged and subsequently disciplined, as an alleged result of such hearing and/or investigation, to the extent of "five (5) days overhead suspension for a thirty (30) day probationary period."
2. That accordingly Carrier be ordered to clear Claimant's service record of any and all notations in connection with Claimant's alleged responsibility with regard the alleged charge by Carrier, that the five (5) day overhead suspension for a thirty (30) day probationary period, as assessed, be declared null and void, that Claimant be completely exonerated with regard to any responsibility or wrongdoing in the instant case.

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.

The Claimant, V. J. Dowling, a Carman at the Carrier's Bayview facility, was ordered by the Carrier to close doors on Train GW 97 on December 30, 1982. One of the car doors, however, remained open, and the train was stopped, and the Claimant proceeded to try to close the door with a bar. He was unsuccessful and tried to accomplish the task using a chain jack. While doing so, he slipped on the ballast, which caused an injury to his foot. The Claimant left the property to seek medical attention and, upon his return, filled out a personal injury form which stated that the Carrier's equipment was defective. The Claimant's supervisor went to test the jack and found it to be in working order. As a result, the Claimant was ordered to attend an investigation which was held on January 27, 1983, and was charged with entering false information on the personal injury form. The Claimant was given a five day overhead suspension and a thirty day probationary period.

The Organization claimed the hearing was not conducted in accordance with Rule 32, was not promptly held, and postponements were not granted. In addition the Organization stated that the Carrier did not prove that the jack was not defective, thus the main element of their case was not proven.

The Carrier argued the investigation was fair and impartial and held in accordance with Rule 32, the investigation was held promptly within 28 days of the incident, and the hearing was conducted in an appropriate manner. With respect to the merits of the case, the Carrier did show that the equipment was not defective, and several witnesses testified to that fact. Since it was shown the Claimant had falsified a company document, the discipline assessed was particularly lenient in keeping with the nature of the charges.

Upon complete review of the evidence, the Board finds that the Carrier has met the requirements for fair hearings as called for in Rule 32. Holding the hearing within 28 days, the incident seems to be in keeping with the conditions of that Rule. In addition the Board finds that a postponement would not have seemed to produce any additional evidence that would have changed the outcome of this case. It seems unusual that the Organization would argue that the investigation was not held promptly enough yet would also argue that postponements were not granted. With respect to the merits of the case, the Board finds that the evidence shows that the jack was in proper working order at the time in question, and the Claimant did make misstatements on the company's document. Regarding the penalty in this matter, the Board finds the suspension and probationary period not to be so arbitrary and capricious that the Board would substitute its judgment for the judgment of the Carrier in this case. Therefore, the Claim will be denied.

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Award No. 10697
Docket No. 10642
2-B&O-CM- '85

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 8th day of January 1986.