

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Laborer, J. A. Douglas was unjustly suspended from service of the Seaboard System Railroad, Waycross, Georgia, on January 21, 1985 through January 23, 1985, both dates inclusive, after a formal investigation was held on January 4, 1985.

2. That accordingly, Laborer J. A. Douglas be compensated for the days of January 21, 1985 through January 23, 1985, both dates inclusive, and the payment of 10% interest rate be added thereto.

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 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 is a Laborer employed by the Carrier at Carrier's Diesel and Car Repair facilities at Waycross, Georgia. A part of his assigned working duties is that of Forklift Truck Operator. In the performance of his duties as a Forklift Truck Operator the use of a radio is required and which must be signed for at the time it was received.

On date of December 13, 1984 a radio which had been assigned to the Claimant was found damaged on a roadway at Carrier's repair facility, it had apparently been run over by some heavy vehicle perhaps another forklift truck, Claimant used it several times previously during the day.

On December 28, 1984 the Carrier sent Claimant the following notice:

"An investigation will be held in the offices of Shop Superintendent with you as principal at 9:30 AM on Friday, January 4, 1985, to develop the facts and circumstances concerning a walkie-talkie, SBD 584367, which was assigned to you, being found damaged on December 13, 1984.

You are being charged with violating that portion of Rule 3 of the Seaboard System Railroad Rules and Regulations of the Mechanical Department pertaining to willful neglect; also Rule 15 of the Seaboard System Railroad Rules and Regulations of the Mechanical Department:

'Willful or intentional breaking or damaging of tools, spoiling and wasting materials will not be tolerated.'

You are directed to attend this investigation.

You may be represented by duly authorized representative of the International Brotherhood of Firemen & Oilers, Helpers, Roundhouse and Railway Shop Laborers, and you may bring any witnesses who have knowledge of the matter being investigated.

At this investigation, a review of your service record will be made."

The Investigation was held as scheduled and on date of January 15, 1985 the Carrier advised Claimant that:

"After carefully reviewing the transcript of the investigation held on January 4, 1985, it is evident that you were guilty as charged by your own admission that the radio was assigned to you and went missing from your possession on January 13, 1984 and when found, the radio had been severely damaged. Therefore, you are being given three (3) days suspension with loss of pay from January 21 through 23, 1985."

In considering all of the facts and all of the testimony presented in this case it is clear that there was neglect on the part of the Claimant, but there was not an iota of testimony that evidenced anything willful or intentional about that neglect. We find no violation of Rule 15. Willful or intentional neglect or willful or intentional breaking of tools is infinitely more serious than unintentional neglect or unintentional breaking of tools and could reflect very badly on the Claimant if some other incident comes up in the future wherein the Claimant may again find himself in a position of unintentionally being in violation of some Carrier Rule, it could result in a much


greater penalty. We therefore rule that the Carrier is to remove words "willful neglect" and leave it simply "neglect" and remove all reference to Rule 15. We shall not disturb the three day suspension.

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 1st day of October 1986.