

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago & Northwestern Transportation Company violated the controlling Agreement dated July 1, 1921, as amended, specifically, Rule #35, when they suspended Electrician Brian Lewis for 60 days, then later changed it to 35 days.

2. That the Chicago & Northwestern Transportation Company be ordered to make Mr. Lewis whole for all wages, pension, vacation, insurance and any other benefits due him account of this mast unjust suspension.

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 August 29, 1984, Claimant, while working on a construction site on the Carrier's property, was observed from the vestibule of an outbound commuter train by the Carrier's Division Safety and Training Coordinator to be neither wearing his safety glasses nor holding his safety glasses in his hand in violation of previously published Safety Rules.

Following an agreed postponement, an Investigation was conducted on the property on September 18, 1984, and on September 19, 1984, based upon the findings of the Investigation, the Carrier imposed a 60 day actual suspension which was timely appealed by the Organization. The Organization contends that the Carrier failed to meet the burden of proof. During the appeal procedure, the Carrier reduced the discipline to 35 days suspension.

The gist of the dispute centers about the conflicting testimony of the Carrier's witness, and that of the Claimant which is corroborated by two independent witnesses, one of whom was the Claimant's immediate Supervisor at the time of the alleged incident.

It is axiomatic in labor law that the reviewing body will not disturb the findings of the trier of fact with regard to conflicting testimony. The Hearing Officer is in a position to best determine the demeanor of the witnesses and the nature of their testimony. Similarly, the general rule is that the conclusions of the trier of fact must be supported by the substantial weight of the evidence as shown in the record.

In light of the conflict in testimony between the Carrier witnesses, and the Claimant and its witnesses, the Board has closely scrutinized the record of the proceeding, and concludes that the conclusions reached by the Hearing Officer were not supported by the substantial weight of the evidence offered by the parties. In so finding, the Board does not attack the veracity of the Carrier's witness, for no doubt the witness testified to what he believed he witnessed. Rather, upon review, the Board finds that the charges against the employe are not supported by the substantial weight of the evidence in the record, and accordingly the Carrier has not met its burden of proof.

A W A R D

Accordingly, the Claim is sustained in accordance with the Controlling Agreements.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.