

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation unjustly assessed Altoona, Pa. Electrician (Crane Operator) E. V. Yingling a 45 day suspension from service (deferred) pursuant to a notice of discipline dated March 19, 1985 and unjustly held him from service pending trial and decision, from March 4, 1985 to March 18, 1985, inclusive.

2. That accordingly, the Carrier be ordered to restore Electrician (Crane Operator) E. V. Yingling to Service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician (Crane Operator) rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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.

The dispute herein involves the same incident as involved in Second Division Award No. 11179, except here the Crane Operator is involved, while the prior case involved the Crane Director.

The Claimant herein had about thirty-five years of service with the Carrier. On March 8, 1985, he attended a trial, beginning at 3:35 PM, on the charge:

"Operating 15-ton crane in a Bay, E. & M. Shop in an unsafe manner on March 1, 1985, at approximately 6:20 P.M., resulting in a personal injury to G. D. Imler."

Claimant had been withheld from service beginning March 4, 1985.

On March 19, 1985, Claimant was notified that he was disciplined by "Forty-five days suspension (Time held out of service to be applied)." Claimant was actually held out of service March 4 to March 18, 1985, inclusive.

A copy of the Transcript of the Trial conducted on March 8, 1985, has been made a part of the record. We find that the Trial was properly conducted. The charge was sufficiently precise to enable the Claimant and his Representative to prepare a defense.

It is well settled in discipline cases that the burden is on the Carrier to produce substantial evidence in support of the charge. The "Substantial evidence" Rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Consol. Ed. Co. vs Labor Board 305 U.S., 197, 229).

(Second Division Award No. 6419).

Another principle strictly adhered to by the Board is that the Board, being an appellate tribunal, may only properly consider the issues that were considered by the parties in the dispute in the handling on the property.

Appeal on the property to Carrier's highest Designated Officer of Appeals in this case was by means of a Joint Submission, dated July 19, 1985, signed by the Local Chairman for the Organization, and the Manager-Labor Relations for the Carrier. The Joint Submission, made a part of the record, is rather lengthy. Substantive arguments in behalf of Claimant were made in the Joint Submission by the Local Chairman. The response by the Carrier was that upon review of the Transcript of the Trial, the discipline was being modified from forty-five days suspension to that of the time withheld from service.

We may agree with the contention of the Carrier made in its Submission to the Board that the accident involved, resulting in a personal injury to a maintenance employe, was due to human failure on the part of a number of employes "who took a cavalier attitude in regard to their work..." However, based upon our careful review of the Transcript of the Trial, and the handling of the dispute on the property, we find and hold that the Carrier has not produced substantial evidence to warrant discipline against the Claimant. In the on-property handling, the Carrier showed no Rule or instruction violated by the Claimant.

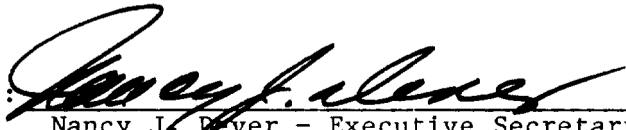
We will Award that Claimant be compensated for the actual work days withheld from service, which we understand amounted to eleven, compensation to be computed in accordance with Paragraph (e) of Rule 7-A-1 of the applicable Agreement, and that any discipline on Claimant's record as a result of the incident herein, be expunged.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 25th day of February 1987.