

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

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

Dispute: Claim of Employees:

1. That the Birmingham-Southern Railroad Company, hereinafter referred to as the Carrier, unjustly, capriciously, and arbitrarily suspended Carman R. D. Love, hereinafter referred to as the Claimant, from service for a period of thirty (30) calendar days, thereby causing him to lose twenty-three (23) work days, as a result of a hearing held on February 26, 1986.

2. And accordingly, the Carrier should be ordered to compensate Claimant for the twenty-three (23) days at the pro rata rate in effect at that time and clear his personal record of the charges relating to said hearing.

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 record in the Docket is voluminous to the extreme, with the Organization and the Carrier each submitting numerous exhibits that have no relevancy to the issue involved, i. e., whether the Carrier unjustly, capriciously and arbitrarily suspended the Claimant from service for a period of thirty calendar days.

The record shows that while on a routine inspection on July 12, 1985, Carrier's General Car Foreman observed graffiti on a Carrier bridge support. A preliminary investigation was begun by the Carrier to determine the source of the graffiti, including the service of a handwriting expert. In the meantime, on October 15, 1985, a car appeared on Carrier's rip track which contained graffiti, apparently spray painted on it. After study by the handwriting expert, and comparison of photographs of the spray painting with samples

of handwritings by several employes, the handwriting expert advised the Carrier that he considered the Claimant as the source of the graffiti. Upon receipt of this information from the handwriting expert, the matter was discussed with the Claimant by the Carrier's General Foreman on February 10, 1986. Nothing came from the discussion and on February 13, 1986, Carrier's Superintendent Maintenance wrote Claimant scheduling an investigation for February 26, 1986, on the charge:

- "1) Your alleged defacement of the Pleasant Grove Bridge, at the Ensley end of No. 8 Yard, with the inscriptions 'D. T. Dye is Trash' and 'Dye Sux Herring Too.' Also your alleged defacement of BS 98298 with the inscription 'D. T. Dye + Bull Partners.'
- 2) Your alleged false statements concerning a matter under investigation when on July 30, 1985 and February 10, 1986 you denied any knowledge of the above referenced inscriptions on the bridge in conversation with Mr. D. T. Dye."

D. T. Dye was Carrier's General Car Foreman.

The Investigation was conducted as scheduled, and a copy of the transcript has been made part of the record.

In the handling of the dispute on the property and in its Submission to the Board, the Organization has complained as to the delay between when the events involved occurred and the date of the charge against the Claimant. We have not been cited to any Rule specifying a time limit in which Investigations are to be conducted. In our opinion, the Carrier acted properly in making a preliminary Investigation to determine if a formal charge may be warranted. When such information was received, the Carrier acted promptly. We find no proper basis for the complaint concerning the timeliness of the Investigation, or the charge against Claimant.

In the investigation of February 26, 1986, the handwriting expert appeared and testified at length in answer to questions by the Conducting Officer, the Claimant and his Representatives. He testified that he was of the firm opinion as to Claimant being the source of the graffiti, and that he had reached his conclusion with reasonable certainty.

By agreement, the investigation of February 26, 1986, was held open for fifteen days following receipt of the transcript by the General Chairman for the Claimant and the Organization to determine if they desired to obtain the services of a handwriting analyst. On March 27, 1986, the General Chairman advised the Carrier that the Claimant did not desire nor request the services of a handwriting analyst. On March 31, 1986, Claimant was advised of discipline imposed, suspension from service for a period of thirty calendar days.

Much was said in the handling of the dispute on the property and in the Organization's Submission to the Board, alleging that Claimant was told that if he underwent a polygraph test and passed it, that the charges against

him would be dropped; that Claimant unilaterally underwent a polygraph test and passed it. It appears from the record, that there was some discussion between Claimant and Carrier Officers concerning a polygraph test by Claimant under certain conditions, but the Officers of the Carrier contend that such conditions were not met by Claimant. We cannot accept the mere assertions by the Claimant in this respect.

In discipline cases 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, 304 U.S., 197,229.)

(Second Division Awards Nos. 6419, 11179, 11180, 11184, 11239, 11240, among others.)

We find that the Carrier did produce substantial evidence in support of the charge. While there were conflicts in the testimony in the Investigation, numerous Awards have been issued to the effect that the Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Further, conflicts in testimony do not warrant overturning the Carrier's action.

Based upon our review of the relevant evidence in the record, we find no proper basis to interfere with the discipline imposed by the Carrier, which, considering the nature of the offense, was not excessive. There is nothing to support any contention that Claimant was discriminated against because of Organization activities.

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 13th day of May 1987.