

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation (Amtrak))

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation unjustly suspended Electrician Ms. Judith Hammond from service 45 days, effective April 25, 1985.

2. That accordingly the National Railroad Passenger Corporation be ordered to restore Electrician Judith Hammond to service with seniority unimpaired and with all pay due her from the first day she was improperly held from service until the day she is returned to service, at the applicable Electrician's rate of pay for each day she has been improperly held from service; and with all benefits due her under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due her including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due her under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to her had she been working in the aforementioned period in order to make her whole; and expunge her 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.

Claimant was regularly employed as an Electrician at Carrier's Maintenance Facility located in Chicago, Illinois, on all dates relevant to this matter.

On March 3, 1985, Claimant was assigned to a 10:00 A.M. to 6:00 P.M. Electrician's assignment under the supervision of General Foreman Mike Diaz and Foreman Helen Breininger-Raymond. At approximately 5:00 P.M. on March 3, Foreman Helen Raymond instructed Claimant to pick up four or five "male to male" electrical cables which were laying on the ground at the south end of Track 2 of the Maintenance Facility.

The record reflects that the testimony of the Claimant and that of her Foreman is contradictory with respect to the sequence of events following the Foreman's issuance of the instructions to Claimant.

The Foreman testified that after having received instructions to pick up the cables, Claimant refused to do so claiming that such activity was a "...man's job..." and walked away from the Foreman.

Claimant maintains that the subject cables were energized and were being used by the second shift crew to supply power to another train on an adjacent track, and to do so would violate standard shop practice.

The Foreman testified that the cables were not connected to any power source nor to any train.

As a result of her misconduct, Claimant was notified by letter dated March 20, 1985, to appear for a formal investigation on March 29, 1985, in connection with the following charge:

...your alleged violation of National Railroad Passenger Corporation Rules of Conduct "I" and "K" in that, while on duty as an electrician at the 14th Street Car Maintenance Facility, on March 3, 1985 at approximately 5:00 P.M. you failed to comply with instructions from your supervisor, Ms. Helen Breininger-Raymond by refusing to hang up electrical cables along Track #2 in the coach yard.

At the request of the Organization, the investigation was rescheduled for April 4, 1985. The investigation was held on April 4, 1985 and Claimant attended, accompanied by three Union representatives.

As a result of the evidence adduced at the investigation, Claimant was found guilty of the charge preferred. By letter dated April 16, 1985, Claimant was assessed discipline of 45 days' suspension (30 days actual suspension from April 24, 1985 through May 23, 1985, and 15 days held in abeyance for one year).

On appeal, the Organization contends that the investigation was neither fair nor impartial, and that the Carrier failed to meet its burden of proof by a preponderance of the evidence.

After a careful review of the record, the Board is of the opinion that the Claimant was afforded a fair and impartial Hearing, and that in all respects, none of her procedural rights were abridged or violated.

With respect to the resolution of the contradictory testimony of the Claimant and the Carrier's Foreman, the Hearing Officer weighed the testimony of both witnesses, found the Foreman's account more credible, and took action in accordance with his determination.

It has been firmly established that the reconciliation of directly contradictory testimony and the determination of witness credibility is properly within the exclusive purview of the Hearing Officer and not this Board on review. See Second Division Award No. 9282 and cases cited therein. In Second Division Award No. 1809, this Board held that:

"The Board is in no position to resolve conflicts in the evidence. The credibility of witnesses and the weight to be given their testimony is for the trier of the facts to determine. If there is evidence of a substantial character in the record which supports the action of the carrier, and it appears that a fair hearing has been accorded the employee charged, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established."

In the instant case, the Hearing Officer declined to accept the Claimant's version, and gave credence to that of the Carrier's Foreman. Given such a determination by the Hearing Officer, this Board finds that there is substantial evidence in the record to support the charge against the Claimant. So long as the conclusions reached by the Hearing Officer are supported by substantial evidence in the record, those conclusions should not be overturned on review.

Concerning the nature and the severity of the discipline imposed by the Carrier, Claimant's actions were tantamount to insubordination. Given the severity of this infraction, the discipline assessed was not excessive nor inappropriate.

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 3rd day of June 1987.