

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  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Appeal of thirty (30) days suspension of Avon Diesel Terminal Electrician T. Alexander, assessed by the Consolidated Rail Corporation by Notice of Discipline dated April 6, 1987.

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 before the Board is voluminous. Claimant was employed as an electrician at Carrier's Avon, Indiana, Diesel Terminal. On January 19, 1987, he was notified to attend trial on the charges:

- "1. Insubordination in that you failed to clean the traction motors on Locomotive 6940, on January 15, 1987, as instructed by your General Foreman C. W. Cherry, between the hours of 6:15 P.M. and 11:00 P.M.

Failure to document work performed on MP-47 Work Packet on Locomotive 6940, on January 15, 1987, after applying two top traction motor inspection covers, between the hours of 6:15 P.M. and 11:00 P.M."

The trial was originally scheduled for 1:00 P.M., Wednesday, January 28, 1987, but was postponed and rescheduled for 1:00 P.M., February 25, 1987. The trial began on the latter date. At approximately 4:25 P.M., February 25, 1987, after considerable testimony had been entered, the hearing officer announced that he was postponing the proceedings, to be reconvened at such

time as pertinent witnesses could be available. Upon objection of the Claimant's representative, the hearing officer, at 4:26 P.M., declared the trial in recess. He did not respond to question of the Claimant's representative, "Recessed until when?" The recess, or postponement, was objected to by the Claimant's representative.

On February 26, 1987, one day after the recess or postponement, the Claimant was notified that the trial recessed on February 25, 1987, would be resumed at 7:30 A.M., March 20, 1987. In a letter bearing date of February 12, 1987, but which the representative stated should have been dated March 12, 1987, the representative advised the Shop Manager that "due to a Safety Meeting I will be unable to attend the proposed trial resumption on March 20, 1987. After we have received and studied our copy of the transcript we could then see about a meeting." On March 13, 1987, the Shop Manager responded to the Local Chairman:

"Our office has received notification that you will not have to attend the Safety Meeting scheduled for March 20, 1987. Therefore, the trial of T. Alexander, Electrician, will reconvene at 7:30 A.M., Friday, March 20, 1987, as scheduled."

The trial was reconvened at 7:45 A.M., March 20, 1987. The Claimant's representative vigorously protested that he had been denied access to the transcript of that portion of the trial conducted on February 25, 1987. The hearing officer responded that the "transcript is provided upon completion of the transcript...Since the proceeding has not been completed, I see no violation by refusing you access to the transcript." The representative vigorously protested the continuation of the trial until the employees had an opportunity to review the transcript of the February 25, 1987, proceedings. The Local Chairman also contended that Carrier's arrangement for his non-attendance at the Safety Meeting scheduled for March 20, 1987, would result in his being sent to a make-up class on April 12, 1987.

After considerable discussion, or argument, between Claimant's representative and the hearing officer at the resumption of the trial on March 20, 1987, another officer was designated as the conducting officer for the remaining of the proceedings, with the original hearing officer acting as an advisor to the conducting officer concerning prior testimony.

It is noted that with the Carrier's Submission, it has included pages 1 through 22 of the February 25, 1987, proceedings, and pages 1 through 46 of the proceedings of March 20, 1987. The Organization has submitted only pages 1 through 46 of the March 20, 1987, proceedings.

This Board dislikes to, and generally does not, dispose of disputes on procedural grounds, but the procedure followed in the present case gives us serious concern. The trial was originally scheduled by the Carrier to begin

at 1:00 P.M., January 28, 1987. By agreement, it was postponed for a period of twenty-eight days, to February 25, 1987. It can only be assumed that the Carrier was prepared to handle the trial to a conclusion on January 28, 1987, when originally scheduled. A postponement of twenty-eight days, to February 25, 1987, certainly provided ample time to secure witnesses. The recessing or postponement at about 4:26 P.M., February 25, 1987, by the conducting officer, without agreement of Claimant's representative may only be considered as arbitrary, especially in view of a refusal to respond to a direct question to indicate when the trial would resume. The time elapsed between February 25, 1987, and March 20, 1987, was certainly unreasonable. A recess of a day or two may have been reasonable, but a recess from February 25 to March 20, was unreasonable and arbitrary.

We consider the request of Claimant's representative at the beginning of the reconvened proceedings on March 20, 1987, for a copy of the transcript of that portion of the trial conducted on February 25, 1987, to be reasonable and justified. The representative could not be expected to properly question witnesses who had testified twenty-three days earlier strictly from memory.

Based on the entire record, we are forced to the conclusion that the trial was not conducted in a fair and impartial manner, and discipline imposed as a result of such proceedings cannot stand. We hold and award that the discipline imposed on April 6, 1987, must be expunged from Claimant's record, and that compensation for any time lost by Claimant be computed in accordance with the provisions of the applicable Agreement.


In view of our decision on the procedural issues, we have not passed upon the merits of the dispute.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bevilacqua - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November 1988.