

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12762
Docket No. 12670
94-2-93-2-53

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

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM: "Claim of employees:

Appeal of discipline of 45 days suspension assessed against Radio Maintainer H. E. Bender on April 21, 1992 by the Consolidated Rail Corporation, Indianapolis, Indiana."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

At the time this dispute arose, Claimant was employed by Carrier as a Radio Maintainer in Indianapolis, Indiana. On November 25, 1991, Claimant was issued a notice of Investigation concerning an alleged act of insubordination which occurred on November 13, 1991. The Investigation began on February 10, 1992 and was concluded on April 2, 1992. Following the conclusion of the second day of hearing, Claimant was notified that he had been assessed a 45-day suspension.

The Brotherhood appealed Claimant's discipline on April 24, 1992, and a "trial appeal hearing" was held on May 19, 1992. In a letter dated May 22, 1992, Carrier restated its position that Claimant was guilty as charged. The appeal was then processed in the usual manner and is properly before the Board for disposition.

At the outset, the Organization maintains that Claimant was not afforded a fair and impartial Investigation. A careful reading of the hearing transcript fully supports that allegation. Typical of the biased approach of the hearing officer is his stated assumption, that Claimant was guilty as charged -- to wit, "Is this where the insubordination and hostility was exhibited?" Throughout the remainder of the transcript, the hearing officer continuously hindered the Organization's attempt to cross-examine Carrier witnesses. Moreover, the testimony of Carrier's primary witness was typified by statements later proven false by the Organization's objective documentary evidence.

As this Board held in Second Division Award 2923:

"Investigations... are for the purpose of ascertaining all the facts, to prove the guilt of the accused. It must be fair and impartial. It is not sufficient that the accused be notified of the precise charge, and that he be advised of his rights. The officer conducting the investigation is charged with the responsibility of developing all the facts and the circumstances surrounding them... Otherwise the investigation would be a mockery and likely a miscarriage of justice would result."

In light of the grievous abuses committed by the hearing officer in the investigative hearing, this Board need not reach the merits of this case. Claimant was not afforded a fair and impartial Investigation. Accordingly, the claim is sustained as presented.

AWARD

Claim sustained.

Form 1
Page 3

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 13th day of October 1994.