

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { System Federation No. 76, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Coach Cleaner Ronald Peoples was unjustly assessed thirty (30) days suspension on July 14, 1977.
2. Coach Cleaner Ronald Peoples was erroneously charged with failure to follow specific instructions from Foreman George Taylor at 4:15 P.M. on June 9, 1977.
3. That the Chicago and North Western Transportation Company be ordered to compensate Coach Cleaner Ronald Peoples for all time lost; to make him whole for vacation rights and any other benefits he would have earned had he not been unjustly suspended; and to remove such discipline from his file, as per Rule 35.

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 employe 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.

This is a discipline dispute in which Claimant was charged as follows:

"Your responsibility for your failure to follow specific instructions from Foreman George Taylor in that you proceeded to throw newspaper and trash into a barrel on the east end of track 17, old yard at 4:15 P.M., June 9, 1977, after being told not to do so."

Following an investigatory hearing, Claimant was found guilty of the charge and was assessed a thirty day actual suspension. In its submission Petitioner raises a number of objections with respect to the conduct of the hearing. In view of our findings hereinafter on the merits, no useful purpose could be served by discussing the alleged procedural problems.

The transcript of the hearing in this dispute is replete with evidence concerning the proper container for the trash in question. It must be noted that all of such evidence is only peripherally related to the central question: was Claimant guilty of the insubordinate act of disobeying direct instructions?

Carrier argues that Claimant was aware of the instructions of a foreman (not his direct supervisor) not to put the trash in a particular barrel, but failed to comply with that instruction. Petitioner denies that Claimant even heard the alleged instruction and hence was not guilty.

A study of the transcript fails to convince us that there was sufficient evidence to support Carrier's conclusion. There is no doubt that Carrier's supervisors have the right to issue instructions with the expectation that such instructions will be complied with. In this dispute the crux of the matter is whether there was indeed a valid instruction. An evaluation of the testimony makes it evident that Claimant was standing at least 20 feet from the foreman, with his back to him, at the time the foreman gave Claimant his order. Further the evidence, without rebuttal, specifies that Claimant was engaged in a conversation with three other employes at the time of the order and further there was considerable noise at that location at the time. Thus, the evidence is far from convincing that Claimant ever heard any instruction. Furthermore, if the order was of sufficient importance to warrant the severe disciplinary action of Carrier, it is totally impossible to understand the lack of any follow-up by the two supervisors most concerned. It is obvious that the entire matter could, in all probability, have been resolved had there been any effort to perservere, verbally, with Claimant.

Based on the entire record, we must conclude that the evidence does not support Carrier's conclusion that Claimant was guilty of failing to follow a valid order: he simply was not aware of any order. For this reason, the Claim must be sustained.

A W A R D

Claim sustained.

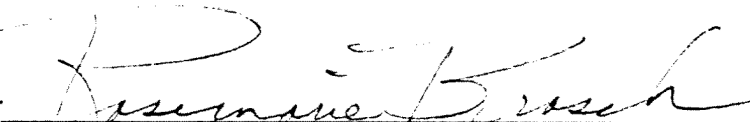
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Award No. 8049
Docket No. 7884
2-C&NW-CM-'79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1979.