



Award No. 4754
Docket No. 4689
2-NPTCofO-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C.I.O. (Electrical Workers)

The NORTHERN PACIFIC TERMINAL COMPANY of OREGON

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement of the Union Pacific Railroad Schedule of Rules, The Northern Pacific Terminal Company of Oregon unjustly suspended Electrician C. P. Soule of 5 working days.

2. That accordingly The Northern Pacific Terminal Company compensate him for all wages suffered by him June 14 through June 18, 1963, account of this improper suspension.

EMPLOYEES' STATEMENT OF FACTS: Electrical worker C. P. Soule, hereinafter referred to as the claimant, is employed by The Northern Pacific Terminal Company, hereinafter referred to as the carrier in the electrical department. He has served the carrier as an electrician for approximately 5 years.

Under date of May 28, 1963, the claimant was notified to appear for a hearing at the Guilds Lake Couch Yard, Portland, Oregon, at 9:00 a.m. Pacific Standard time, Wednesday, June 5, 1963, for formal hearing.

Under date of June 5, 1963, a hearing for Electrician C. P. Soule was held at the Guilds Lake Couch Yard as scheduled.

Under date of June 11, 1963, Mr. G. E. Weakley, master mechanic, notified the claimant that he would be assessed 5 working days, or final discipline.

Under date of August 9, 1963, General Chairman L. J. Wisniski received a signed statement from an employe of The Northern Pacific Terminal Co. in regard to the removing of the claimants blue flag.

This dispute was handled by the employe's representative, with correspondence and conference with the carrier's officials designated to handle such disputes, all of

stances, it would not be fair to permit consideration of this statement in so far as it may contradict the evidence at the hearing. Furthermore, the writer considers a statement of this character as having no probative force and being no better than the so-called 'hearsay' evidence referred to by Judge Shake in Award No. 2797 (Third Division). It is necessary that 'evidence of rational probative force' be used and that due process be shown. The statement of the foreman cannot be considered as part of the evidence in the record."

We think the same reasoning must necessarily apply to the employees. Claimant's representative was clearly told that he could have additional witnesses as well as those present. It was then up to him to name the desired witnesses so their presence could be requested. Had the parties been unable to contact them, then a request for postponement may well have been in order. It is not, we think, in order to request a postponement on such vague grounds.

Apart from this, it is conceded that the investigation was properly held, so any other objections that may be made later have no foundation.

CONCLUSION: Carrier believes it has shown that:

1. Claimant did accuse Mr. Nelmark as charged;
2. Claimant had no personal knowledge or factual basis for this accusation, although he had an opportunity to substantiate same in two separate hearings;
3. There is no showing that claimant's rights were in any way prejudiced;
4. There was substantial credible evidence to support Mr. Weakley's decision;
- 5 Rule 37 has been fully complied with and the agreement has not been violated. Carrier respectfully requests that the claim be denied.

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 employees 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.

The carrier's hearing officer refused a request by claimant's representative at the investigation for a postponement of one week to bring in additional witnesses, particularly the man who took the blue flag down. While it appears that the obstructive objections by that representative had created an atmosphere which contributed to such refusal, under the circumstances shown, such request was reasonable and its denial was a violation of Rule 37.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1965.

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