

Award No. 5188
Docket No. 5076
2-WT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current agreement, Car Repairman, R. E. Samuel, was unjustly assessed with a five (5) day suspension from service commencing July 12, 1965.

2 — That accordingly the Carrier be ordered to compensate R. E. Samuel for all time lost as the result of said five (5) day suspension.

EMPLOYEES' STATEMENT OF FACTS: Carman, R. E. Samuel, hereinafter referred to as the Claimant is employed as Car Repairman on the 4:00 P. M. to 12:00 Midnight shift, Union Station, Washington Terminal Co., hereinafter referred to as the Carrier.

On March 24, 1965 the Claimant received notice from the Carrier's Master Mechanic to appear in room 203 Union Station at 2:00 P. M., April 2, 1965 for a hearing on the charge of;

"While assigned as Car Repairman, tour of duty 4:00 P. M. to 12:00 Midnight, on March 23, 1965, you left your assignment without permission at 11:46 P. M., and falsified your time card by showing that you finished work at 12:00 Midnight."

copy attached and designated Exhibit (A), hearing date was postponed until 2:00 P. M. April 16, 1965 by notice from the Carrier's Master Mechanic dated March 29, 1965, copy attached and designated Exhibit (B). The hearing was held on schedule and transcript of hearing is herewith attached and designated Exhibit (C). On May 11, 1965 the Claimant received notice from the Carrier's Car Foreman notifying that he had been found guilty as charged and that he was suspended for a period of five (5) days beginning on May 31, 1965, copy attached and designated Exhibit (D).

The Claimant's case has been appealed in accordance with the collective controlling agreement, effective June 16, 1946, up to and including the highest

in giving weight to said record at anytime before making its final decision. * * * Carrier's denial of leniency was not improper and this Division is not able to grant leniency where carrier has refused to." (Emphasis ours.)

Third Division Award 13672, JCDCE v. SP (SL), Referee Weston, claim for reinstatement denied:

"* * * It is true that the steward on the same car was himself a party to somewhat similar misconduct and had been dismissed by the Carrier but reinstated without back pay by this Board, mainly for the reason his 'work record over a period of more than nineteen years was without a blemish.' See Award 12000. Unlike the steward, Claimant's work record is not clear of blemish; he has accumulated fifty demerits and on one prior occasion, was warned against (the same misconduct). * * *"

First Division Award 12428, T v. WP, Referee Wenke, claim denied:

"* * * (A)uthority (to impose discipline) * * * does not mean that the carrier must, in every instance, impose the same sentence for like or similar offenses. What it does mean is that the sentence imposed in each case should be reasonable, that is, just and proper considering the nature of the offense and the past record of the employe involved." (Emphasis ours.)

First Division Award 20366, E v. BRofC, Referee Davey, claim denied:

"* * * In any discipline case it is standard practice to consider the employe's overall record in determining the appropriate penalty."

CONCLUSION: The charges in this case were substantiated.

The measure of discipline was not disproportionate to the offense.

The claimant's service record — a record he made by himself — was properly taken into account when carrier refused to grant him the same reduction in discipline granted his fellow offenders.

The discipline should not be disturbed.

All data submitted in support of the carrier's position has been presented to the organization and has been made a part of the question in dispute.

Oral hearing is waived unless requested by the organization.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

Claimant, as well as three other car repairmen, left work fourteen minutes early on March 23, 1965, but showed the regular and prescribed quitting-time on their time-cards. As a result of this conduct, he was given a five-day suspension which the Petitioner maintains is unjust.

Petitioner's contention that it was general practice to leave work early is not substantiated by the evidence and we are not satisfied with Claimant's explanation for his actions on March 23, 1965.

Carrier is entitled to a full day's work and to enforce strictly its rights in that regard.

A five-day suspension was also given to each of the other employees who engaged in the same conduct but subsequently was reduced to a formal reprimand. Carrier explains the disparity in the discipline by pointing out that it took into consideration the service records of the employees involved in the incident. It does appear that, unlike those of the other employees, Claimant's record is marred by a suspension in 1960 for fighting on company property and a reprimand in 1964 as well as a suspension in 1965 for failing to remove a hand brake. Carrier is certainly within its rights in giving weight to the service records of employees in assessing discipline, if those records are considered, as they were here, during investigations or discussions on the property. See Award 4042. Carrier's evaluation of the record does not appear to be unreasonable or arbitrary and the Board is not in a position in this situation to substitute its judgment for that of management in determining the weight that should be given the infractions shown on the service record.

Claimant was accorded a hearing before discipline was administered and no material procedural errors have been disclosed in the proceedings. The suspension does not appear to be excessive or unfairly discriminatory and the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1967.