



Award No. 5746

Docket No. 5653

2-SCL-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(CARMEN)**

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the provisions of the controlling agreement when they improperly suspended Carman Joseph Broda from service, on November 3, 1966 pending investigation, and subsequently dismissed him from service on December 6, 1966, following investigation.
2. That the Carrier be ordered to restore Carman Joseph Broda to service with seniority and service rights unimpaired, including vacation rights, coverage under existing Health and Welfare and Life Insurance provisions and compensate him for all time lost from November 3, 1966.

EMPLOYEES' STATEMENT OF FACTS: Joseph Broda, hereinafter referred to as the claimant, has been employed by the Seaboard Coast Line Railroad Company (Seaboard Air Line Railroad Company), hereinafter referred to as the Carrier, as a carman at Hialeah, Florida, his regular assigned hours being third shift, 12:00 midnight to 8:00 A.M., Thursday through Monday with rest days Tuesday and Wednesday. Claimant was notified by letter dated October 17, 1966 to appear for formal investigation on October 26, 1966. The charges were as follows:

"You are charged with leaving your assigned duties and taking a shower while on duty without permission on your tour of duty on the A.M. of October 10, 1966. You are also charged with being insubordinant in the Car Department Office when you refused to wait the arrival of your Committeeman so this incident could be discussed with you and your representative; instead you elected to walk out of the office after you were asked to wait."

On Thursday, November 3, 1966 the Claimant was given an investigation, transcript of which is submitted as Employees' Exhibit A. On December 6, 1966 the Claimant was notified by letter that he was dismissed from service.

"From its inception this Division has stated that in disciplinary cases it is without authority to substitute its judgment for that of the Carrier unless the employees affected have been discriminated against or treated in an arbitrary or capricious manner."

also see Second Division Award 3884 and awards referred to therein.

(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 waived right of appearance at hearing thereon.

In discipline cases the Board sits as an appellate forum. As such, our function is confined to determining whether: (1) Claimant was afforded a fair and impartial hearing; (2) the finding of guilt as charged is supported by substantial evidence; and (3) the discipline imposed is reasonable. We do not weigh the evidence *de novo*. If there is material and relevant evidence of probative value, which if believed by the trier of facts, supports the finding of guilt, we must affirm the finding. See Third Division Award No. 13179.

We hold, in the instant case, that: (1) Claimant was afforded due process; (2) the finding of guilt as charged is supported by substantial evidence; and (3) the discipline imposed, under the peculiar circumstances involved, was excessive in view of Carrier's prior knowledge and toleration of Claimant's propensities.

We find the following discipline to be reasonable and will so award:

Claimant shall be reinstated with all service, seniority and vacation rights unimpaired; but, without compensation for time lost from date of suspension (November 3, 1966) until the date of his reinstatement by Carrier in compliance with the Order of this Board.

Claim sustained to the extent set forth in Findings, *supra*.

A W A R D

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.

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