

**Award No. 6315
Docket No. 6194
2-B&M-CM-'72**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

BOSTON AND MAINE CORPORATION

DISPUTE: CLAIM OF EMPLOYES:

1. That the Boston and Maine Corporation violated the controlling agreement, namely Rule 31, paragraph (d.) at East Deerfield, Massachusetts, beginning on January 18, 1971, through February 10, 1971.

2. That accordingly, The Boston and Maine Corporation be ordered to compensate Carman D. C. Call for all wage loss between January 18, 1971, and February 10, 1971, while held out of service by the Carrier.

EMPLOYEES' STATEMENT OF FACTS: The Boston and Maine Corporation, hereinafter referred to as the Carrier, violated the provisions of the controlling agreement, starting on January 18, 1971, through February 10, 1971, when the Carrier unjustly suspended and held out of service, Carman D. C. Call, hereinafter referred to as the Claimant, at East Deerfield, Massachusetts.

The Claimant was regularly employed by the Carrier at its East Deerfield Car Department and also was a regular member of the wreck crew.

Under the date of January 21, the following notice was sent to the Claimant, by the Carrier's Supt.-Cars, T. W. Airey, East Deerfield Car Department, Boston and Maine Corporation:

East Deerfield, Mass.
January 21, 1971

D. C. Call
Mohawk Trail
Shelbourne, Mass.

There will be a hearing held at East Deerfield Car Shop office
Wednesday, January 27, 1971 at 9:30 A. M.

A. M. on January 18, 1971. There also can be no question in the mind of your Board that his convenient sickness developed after he had been instructed to perform a service which he two days earlier had brazenly boasted he would not perform.

As to the charge of sleeping after the 4:00 A. M. reporting time, there is no possible defense which can be or has been advanced by or on behalf of Mr. Call. He admits he came on the Carrier's property about Midnight so he would not run the risk of car trouble in the morning. He admits he made a bed and went to sleep. He does not deny the Wreck Master's statement that he was asleep at 5:00 A. M. when the Wreck Master woke him. What more can possibly be said to prove that charge? The answer is obvious. Nothing.

It is a well-established maxim that a Carrier has a right and an obligation to assess discipline. In the instant case that obligation was properly exercised by the Carrier. A specific charge was made. A factual record of testimony was developed. An evaluation of the testimony was made. A determination to discipline, which was neither capricious nor excessive, was made only after it was determined that sufficient competent testimony had been adduced to establish Mr. Call's guilt of the charges. There can be no change made in those facts.

Without in any way retreating from any part of the Position outlined above, it is indeed interesting to note the claim which has been made and advanced on behalf of Mr. Call. Your Board is asked to pay him for a period of time beginning January 18, 1971, and continuing until February 10, 1971, "while held out of service by the Carrier." If this contention were not so absurd, it would be humorous.

Mr. Call contends he suddenly became so ill at 5:00 A. M. on Monday, January 18, 1971, that he could not possibly comply with the order given to him by the Wreck Master. He would have your Board believe he was not insubordinate—he was violently ill. And he himself said at page 8 of the hearing record, "In an hour you can get awful sick."

Assuming without conceding but in fact denying that he was "awful sick," no one—not Mr. Call nor any of the plethora of representatives who have championed his cause—have offered one scintilla of testimony or proof as to when he sustained a miraculous cure from the awful sickness which befell him so suddenly at 5:00 A. M. on January 18, 1971. Your Board is asked, however, to require the Carrier to compensate Mr. Call during this unknown period of illness. Just how such a determination can be made by your Board is beyond the realm of Carrier's comprehension.

In view of the foregoing, Carrier submits that there is nothing in the record of this case to support the Employees appeal and/or claim, and they should 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 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.

It is evident from the context of the record that employe refers to Rule 31, second paragraph (b) of the controlling agreement, instead of Rule 31, fourth paragraph, which claimant has designated (d). In this rule, the paragraphs are not designated by letters. Rule 31 has been invoked, and we may go into all of Rule 31.

The discipline, if warranted, was not excessive or arbitrary.

After careful examination of the record, we find as follows:

(a) There were adequate facts and substantial evidence adduced at the hearing to support the findings of the designated officer of the carrier.

(b) The requirements of due process were met and the hearing was not arbitrary or capricious, nor was it conducted in an arbitrary or capricious manner.

(c) Under Rule 31, the carrier has a right to discipline if certain conditions are met and a fair hearing is held.

(d) The conditions for discipline set forth in Rule 31 were complied with by the carrier and the employe.

(e) A fair hearing was conducted.

(f) The penalty was not excessive.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.