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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6541
Docket No. 6391
2-SLSW-CM-'73

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. 45, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That under the terms of the current agreement, Carman S. C. Roberts was unjustly held out of service pending formal investigation and decision from August 3, 1971 to September 3, 1971.
2. That Carrier be ordered to reimburse Carman S. C. Roberts for all wages lost while unjustly withheld from service and the forty five demerits be removed from his personal record.

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.

Claimant was employed by Carrier on December 29, 1969; he was a Carman in the Pine Bluff, Arkansas gravity switching yard of Carrier. On August 3, 1971 Claimant was sent home early and received a letter dated August 4, 1971 informing him that he was being held from service pending investigation and decision. By letter dated August 13, 1971 Claimant was notified of a hearing to be held on August 19, 1971 to investigate his alleged refusal to obey orders and insubordination on August 3, 1971. The investigation was held as scheduled and by letter dated September 1, 1971 Claimant was informed that the Carrier had found him guilty of being insubordinate and quarrelsome and:

"As results of facts developed in this investigation you are being assessed forty-five (45) demerits. Arrange to report for duty promptly . . ."

Claimant returned to service September 3, 1971.

A careful review of the record of the investigation reveals that there was evidence to support conclusion reached by Carrier, in spite of some conflict and some rather tenuous circumstances surrounding the incident. The sole issue we must address ourselves to is that of the alleged violation of Rule 24-1. That Rule reads:

"No employee shall be disciplined without a fair hearing by a designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

The discipline assessed Claimant merely indicates "demerits" and is silent on the matter of the time during which he was held out of service. Although Carrier had the right to suspend Claimant under Rule 24-1, we question the promptness of the hearing and decision under the same rule. A period of 16 days from the incident to the hearing and an additional 13 days before Claimant received the Carrier's decision and was able to return to work would seem excessive. Under all the circumstances of this case, we find that the 29 days suspension in fact, although not specified in the written disciplinary notice, exceeded the limits of promptness provided by the Rule and was unreasonable.

A W A R D

Claimant shall be paid for twenty (20) days pay at eight hours straight time per day.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1973.