Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6794
SECOND DIVISION Docket No. 6534
2-PATH-CM-'74

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada, Railway Employes' Department, A. F. of L. - C. I. O.
(Port Authority Trans-Hudson Corporation

Dispute: Claim of Employes:

1. That the Carrier violated the Controlling Agreement on August 14, 1972, when they unjustly suspended Car Inspector Apprentice, W. Garcia for sixty (60) days and held said suspension in abeyance until his return from military leave.

2. Accordingly, he is entitled to be made whole by being compensated for all wages lost, if any.

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.

Following an investigative hearing on July 26, 1972 Claimant, on August 14, 1972, was assessed a 60-day suspension for "loafing and lounging in a car" while on duty in violation of Rule 47 of the Carrier's Book of Rules. Careful review of the record leaves no doubt that Claimant was, in fact, sleeping on duty in the Inspection Shop at approximately 10:00 A.M. July 20, 1972.

Petitioner asserts that the discipline assessed was unjustly severe. Upon review of the record we cannot agree. Claimant, an employe with less than two years' service, has a record of prior progressive discipline assessment on two occasions with this Carrier. In the circumstances, the 60 day suspension is not unreasonably harsh.

The sole remaining issue presented by this claim relates to the suspension of implementation of the assessed discipline. The uncontroverted record shows that Claimant enlisted in the United States Air Force and thereafter entered military service on August 7, 1972, one week before the discipline was assessed. While in military service, Claimant is on leave of absence from Carrier. In these circumstances, Carrier, in its letter of August 14, 1972 notifying Claimant of the hearing results, stated as follows: "... you are to be suspended for a period of 60 days upon your return to active service with PATH following your tour of military duty."

Petitioner contends that the Railway Labor Act, as amended, and the Agreement of the parties contemplate prompt disposition of contractual disputes, and with this we agree. Petitioner further asserts, however, that Article III, Section 11 of the controlling agreement requires that the suspension for 60 days must be served immediately upon the decision of the hearing officer or not at all. We cannot concur that this necessarily follows from either the Act or the agreement herein.

In our analysis of this claim we focus on the voluntary and self-initiated nature of Claimant's inability promptly to serve the assessed suspension. When, as in the instant case, such impossibility of immediate discipline assessment is self-caused, Claimant cannot validly protest the holding over of justifiable discipline until his return to service. We do not here decide or suggest that the same result must follow where a truly supervening force beyond the control of the employe prevents the prompt imposition of discipline. Such a case must turn on its own merits if and when it arises. We do hold that in the circumstances of the instant case Carrier did not act unjustly in holding the suspension in abeyance until Claimant's return from military.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1974.