

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

Parties to Dispute: (System Federation No. 21, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Central of Georgia Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman W. E. Parker, Columbus, Georgia was improperly suspended from service from January 31, to February 8, 1973.
2. That accordingly, the Carrier be ordered to pay Carman W. E. Parker six (6) days pay at his regular rate of pay plus an additional amount of 13.33% interest per annum beginning on date of suspension, January 31, 1973.

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 employees 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.

On January 24, 1973 a form relating to Carrier's "blue flag" instructions was distributed to Claimant and all other carmen on duty. They were to attest to the fact that they had read, understood and would abide by the instructions. Claimant refused to sign.

On January 31, 1973 Claimant again refused to sign the form after being ordered to by Carrier's Master Mechanic.

On January 31, 1973 Claimant again refused to sign after being told to do so, and the Master Mechanic suspended Claimant from service pending investigation. By letter dated February 2, 1973 Claimant was formally charged with insubordination and a hearing was scheduled for February 8, 1973.

At the conclusion of the hearing on February 8, Claimant signed a modified version of the form. On the same day the Master Mechanic notified Claimant that he was guilty of insubordination, but inasmuch as Claimant had signed the form the Master Mechanic allowed him to return to service effective with his next tour.

The Claimant contends that Claimant was improperly held out of service in violation of Rule 35, and that Claimant's refusal to sign the form was not insubordination.

With respect to the question of insubordination, the Board finds that Claimant's conduct under the circumstances was insubordinate.

Despite this, however, the Board further finds that, under the provisions of Rule 35, Claimant was improperly held out of service pending investigation and hearing.

Rule 35 provides:

"No employe shall be disciplined without a fair hearing by the carrier. Suspension in proper cases (the proper case is one where leaving the man in service pending an investigation would endanger the employe or his fellow employes or company interest) pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and the duly authorized representative will be apprised of the precise charge in writing and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal." (Underscoring added.)

Carrier has failed to show that Claimant would in any way endanger himself or anyone else, and Carrier's action was unwarranted.

A W A R D

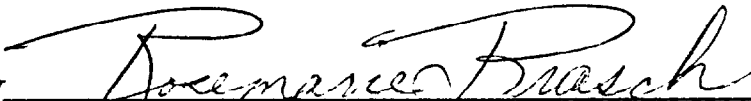
1. Claimant was insubordinate.
2. Claimant was unjustly suspended, and is entitled to be compensated for any wage loss.
3. The circumstances herein do not warrant the payment of interest and that portion of the claim is denied.

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Award No. 6900
Docket No. 6684
2-CofG-CM-'75

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of August, 1975.