

The Second Division consisted of the regular members and in addition Referee Louis Norris when award was rendered.

Parties to Dispute: (The International Association of Machinists
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(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated Rule 39 of the Schedule "A" Agreement made between the Illinois Central Gulf Railroad and the International Association of Machinists, AFL-CIO, when they double disciplined and suspended Machinists J. Diesel, R. Crenshaw, P. Holder and L. Wyatt from service for five (5) working days, Monday, June 10, through the 14th, 1974.
2. That, accordingly, the Carrier be ordered to compensate the four (4) aforementioned employees eight (8) hours each for each of the five (5) days that they were suspended.

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.

This dispute involves four Claimants who were assigned to work as machinists on the afternoon shift from 3:40 p.m. to midnight. At about 11:40 p.m. on April 18, 1974, General Foreman Lockett and Production Foreman Rogers, while making a regular inspection, came upon Claimants playing cards around a table, with a score sheet in evidence. Mr. Lockett scolded Claimants, told them card playing during work hours was not allowed and warned them not to do it again.

Claimants were under the impression that no further action would be taken by Carrier. However, the next day Messrs. Lockett and Rogers met with Claimants and their Organization representative, at which time Claimants were advised that the incident was required to be reported to the shop Superintendent.

Thereafter, formal investigation was held on May 13, 1974, pursuant to Notice charging each Claimant with "loafing and engaging in a game of cards and leaving their work area during regular hours without permission from their supervisor." Each of the Claimants was found guilty of "engaging in a game of cards during regular working hours on April 18, 1974", and each was assessed discipline of suspension from service for five days.

The transcript of the Investigation is voluminous, comprising some 107 pages of recorded testimony. In essence, however, Claimants did not deny that they were playing cards during working hours and that a score sheet was being kept; admitted that they had no permission to leave their work area; and acknowledged that they knew the rules and were fully cognizant of the Carrier's policy against card playing.

During the handling of this dispute on the property, various contentions of alleged impropriety by Carrier were asserted by Petitioner. All of these contentions, but one, have now been abandoned or withdrawn by Petitioner. The remaining single issue is stated in Petitioner's formal Submission as follows:

"The only issue before your Honorable Board is contained in the General Chairman's petition to the Board, that the Carrier double disciplined the Claimants." (Emphasis added).

At the time Mr. Lockett confronted Claimants at their card playing, he admonished them and warned them against repetition of the offense. Petitioner construes this to mean that Claimants were "disciplined" and "placed on probation". In fact, however, the term "probation" was not used. Thus, the narrow precise issue now before the Board is whether the admonition and warning to Claimants constituted assessment of discipline "barring Carrier from imposing further discipline against Claimants on the same offense." Assuming this to be so, Petitioner argues, it follows that Rule 39 was violated inasmuch as it provides that "no employe shall be disciplined without a fair hearing by a designated officer of the Carrier."

It would appear that this is a case of first impression, none of the prior Awards cited by the principals being directly in point. Thus, for example, Award 6609, cited by Petitioner, deals with a charge of "flagrant insubordination" and arbitrary imposition of the extreme penalty of dismissal. Neither issue is involved here.

Carrier, on the other hand, cites some 21 prior Awards culled from cases decided by each of the four Divisions. Of these, 18 Awards relate to imposition of actual penalty discipline either without a proper hearing, without any hearing at all, or one improperly held before a Carrier official not designated for such purpose. In each of these cases, due process was clearly violated. However, they are not germane to the issue before us, for in each case the penalty discipline imposed was either dismissal or actual suspension from service.

The three remaining Awards touch on the issue in varying degrees and do shed some light. In Award 13575 (Bailer-3rd Div.) "discipline" was rather unique in that Carrier required Claimant to make financial reimbursement. This was held tantamount to discipline and, since no trial had been held, the claim was sustained for violation of due process. Clearly, this involved actual discipline since a specific course of conduct was imposed by Carrier as a penalty.

In Award 18244 (Devine-3rd Div.), a letter was sent to Claimant by Carrier's Superintendent "concerning the prompt assembling of facts and the reporting of an accident". Petitioner contended this constituted improper "discipline" since no investigation had been held as required by the Rules. This contention was disallowed and the claim denied, it being held that the letter neither implied nor assessed any discipline.

In Award 18370 (Criswell-3rd Div.) a formal investigation was held to determine responsibility for a train passing a signal and damaging a cross-over switch. Fourteen days after the hearing, Carrier wrote Claimant:

"It is very evident that this accident resulted from a complete lack of understanding between you of the move to be made.

"Due to circumstances involved in this particular case, discipline will not be applied against your records. However, you will be expected to carry out your duties in a responsible manner in the future, and no further incident of this nature will be tolerated." (Emphasis added).

Thus, we have somewhat of a similar situation since the admonition and warning were practically identical with the statement to Claimants in the case before us. Additionally, Carrier in the above cited case wrote to the District Chairman:

"The investigation referred to was not made a matter of record, nor was a transcript made. No discipline was applied, and no entries were made against the personal records of any employe involved."

Notwithstanding the fact that a formal investigation on charges had been held and an actual letter (absent here) of admonition and warning sent to Claimant, the Referee made no finding that discipline had been imposed. The only purpose of the Award was to ensure the accuracy and future effectiveness of Carrier's assurances, the Referee holding as follows:

"There is no monetary part of this claim. It only asks that the letter of June 20 not become a part of Claimant's record. Carrier tells us it is not.

"In sustaining this claim we direct the Carrier to follow its statement in the July 23, 1969, letter, supra, concerning the June 20 letter not being made a part of Claimant's record; and reiterate the Carrier's obligation under Rule 11½(d)."

The latter reference to the Rule related to Carrier's failure to render its "decision" within ten days after the hearing and this accounted for the claim being "sustained in accordance with the Opinion and Findings."

It is quite obvious from the foregoing that the sole purpose of the Award and, in fact, of the claim itself, was to ensure that no discipline would be assessed against Claimant. The precise discipline would have been the recording of the letter of admonition and warning as part of Claimant's record.

In the case at hand, we have no investigation, no formal letter and no threat of any entry against Claimants' service records. In short, nothing but an oral reprimand and a warning against repetition of the offense. Probation, there was not. Discipline, there was not, neither expressed nor implied.

Our analysis of the prior Awards cited by both sides evidences that the term "discipline" implies imposition of some real penalty - dismissal, suspension from service, compulsion upon an employee to follow a certain line of conduct or, further down the scale, a letter entered against one's service record. We have found no case in which a tongue-lashing and warning "not to do it again" has been held to constitute "discipline". We so find in the case before us. To hold otherwise would beggar normal usage of the English language and fly in the face of the understanding which Claimants clearly possessed as to the words used here.

Accordingly, we cannot conclude that any "double discipline" was here involved. Hence, no prior discipline having been imposed, Carrier acted within its managerial prerogatives when it decided to view the card playing incident in a more serious light and, after formal investigation, to assess discipline. Rule 39, therefore, was in no sense violated.

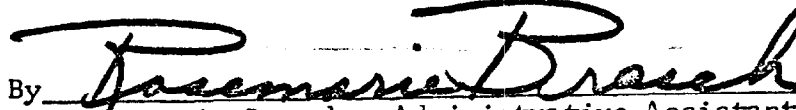
Additionally, we find the discipline here imposed, suspension for five days, to be neither arbitrary, unreasonable or capricious, nor in violation of due process. Based on the record evidence therefore, and the foregoing findings, we will deny the claim.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March, 1976.