

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

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Illinois Central Gulf Railroad Company

Dispute: Claim of Employee:

1. That under the current Agreement Carman H. P. Gordon was unjustly suspended from the service of the Illinois Central Gulf Railroad, beginning March 20, 1974, and ending May 20, 1974.
2. That accordingly the Illinois Central Gulf Railroad be ordered to compensate Carman H. P. Gordon for all time lost account of the aforesaid unjust suspension.

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.

Claimant was employed as a Car Inspector at East St. Louis, Illinois. One December 9, 1973 Claimant was detained by Special Agents and charged with possession of a firearm while on duty. A semiautomatic pistol, Garcia 9 mm Serial No. 1253048 was taken from him and confiscated. On December 13, 1973 bullet holes were discovered in a piggyback trailer, parked in the yard near where Claimant works, which was loaded with glassware for shipment to Owens Glass Company in Alton, Illinois. The lading was not damaged and since the trailer was full a thorough search of the interior was not affected. A hearing was held on December 18, 1973 at which Claimant was found guilty of possession of the firearm on company property and assessed 60 days suspension. This discipline was not appealed and is not contested herein. On January 4, 1974 Claimants pistol was returned to him by Special Agents. Claimant alleges he was assaulted by the agents, they denied it and the matter remains unresolved on this record.

The empty trailer was returned from the glass company to Chicago on January 10, 1974 and a slug was removed from the interior wall of the trailer on that date. The spent projectile was identified through ballistics tests by the Illinois State Bureau of Identification Crime Lab as having been fired from the Garcia 9 mm Semi Automatic pistol Serial No. 1253048 owned by Claimant. Another formal hearing and investigation was convened February 28, 1974 and subsequently Claimant received the following discipline from which he now appeals:

"At the investigation held in the Assembly Room at the Hump Office, East St. Louis, Illinois, 2:15 P.M. on Thursday, February 28, 1974, it was disclosed that you caused damage to IC trailer ICG 206489 by firing bullet holes into this trailer on or before December 9, 1973.

For the above damage caused to ICG 206489, you are assessed 60 calendar days without pay beginning with March 20, 1974, and you may return to your regular assignment at the expiration of your assessed 60 days which will be May 21, 1974.

Before you return to work on May 21, 1974, you must report to Mr. W. R. Fillback, General Car Foreman at East St. Louis, Illinois for instructions concerning your assignment."

This record is replete with conflicts in testimony, accusations and countercharges, and irrelevant or immaterial assertions. We agree with the Organization that Carrier might better have tried the whole case together or else awaited development of all the evidence so as to avoid two nearly back-to-back proceedings flowing from essentially one transaction. But we cannot say that Claimant was prejudicially deprived of a fair and impartial hearing or that substantial evidence does not support a finding that he fired at least one round into the piggyback trailer when it was parked at East St. Louis Yard. In all of the circumstances we cannot conclude that the 60 day suspension for damaging the trailer was arbitrary, unreasonable or capricious. We must 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
Rosemarie Brasch - Administrative Assistant