

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the controlling agreement was violated when the Seaboard Coast Line Railroad Company unjustly suspended Carman I. R. Banks from service on September 26, 1974.
2. That accordingly the company be ordered to compensate Mr. Banks for all time lost, September 26, 1974 through October 16, 1974, both dates inclusive, and in addition, all overtime he may have earned during the period of his 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 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.

After an investigation pursuant to notice given Claimant "to develop the facts and place responsibility for your falsifying of your time card", Claimant was given a 15-working-day suspension. Claimant states the suspension should be lifted because the charges made against him were not specific; he was not charged with violating rules of the collective bargaining agreement but instead rules unilaterally imposed by the Carrier; he was judged guilty prior to hearing; he was in any event suspended prematurely in violation of Rule 32; and, finally, even if there were no procedural defects, the Carrier failed to prove wrongdoing on the part of the Claimant.

After full review, this Board finds the Claimant's arguments without merit.

Claimant was apprehended at the time clock on September 26, 1974, by M. H. Dudley, a Carrier Supervisor, and by W. I. Timms, a Carrier Special Agent. As a result of this event he was given a notice of hearing which read in its first paragraph as follows:

"Please arrange to attend formal investigation to be conducted in General Car Supervisor's Office, Howells, Georgia, 2:00 p.m., October 2, 1974, to develop the facts and place responsibility for your falsifying of your time card at 11:59 p.m., September 26, 1974, at time clock located in the Car Department at Howells, Georgia."

The first paragraph of Rule 32 -- Disciplinary Hearings reads as follows:

"No employee shall be disciplined without a fair hearing by a designated officer of the Company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed in violation of this rule. At a reasonable time prior to the hearing such employee and the local chairman will be apprised in writing of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and be represented by the duly authorized representative of System Federation No. 42."

This Board finds that the combination of the occurrence at the time clock and the wording of the hearing notice were sufficiently specific to make the Claimant fully aware of the nature of the charges and the content of the forthcoming hearing. While the hearing notice may have been more artfully worded, perhaps with the addition of the word "alleged" before "falsifying", the hearing was conducted in a full and impartial manner sufficient to bring forth the facts involved and the Claimant's defense.

The hearing notice further charged the Claimant with violation of "rules of Seaboard Coast Line Railroad Company Rules and Regulations of the Mechanical Department". These rules are not contained within the Agreement between the Carrier and the Organization. It is well established that a Carrier may promulgate rules for the conduct of employees that are not included in the Agreement. See Award No. 1581 (Daugherty) and Award No. 5987 (Dorsey). Referee Dorsey's Award reads in part:

"General Rules promulgated by a carrier, unless they contravene the terms of a collective bargaining agreement, are mandatory standards with which an employe agrees to comply, expressly or impliedly, in his employment contract. Failure to comply subjects him to disciplinary action."

Rule 32, quoted above, provides the right of the Carrier to suspend an employe "in proper cases pending a hearing". Thus, the Claimant's argument that his suspension was premature is not valid.

As to the occurrence itself, this Board finds there was patent evidence upon which the Carrier could properly act in regard to the falsification of his time card by the Claimant. Numerous past Awards support the view that this Board will not interfere with the resulting discipline, given certain basic conditions and proper procedural steps. As noted in Award No. 6525 (Franden):

"As to the sufficiency of the evidence we must reiterate the time honored axiom that we will not substitute our judgment for that of the Carrier unless the record reveals that the Carrier's finding was wholly without merit. In the instant case evidence was adduced from which reasonable men who were able to observe the demeanor of the witnesses could have made the findings...."

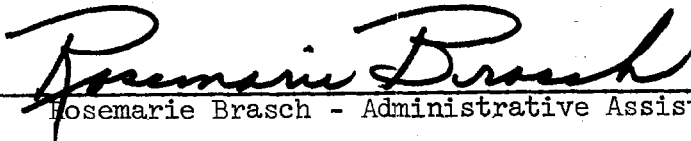
A W A R D

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 29th day of October, 1976.