

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 {
 { Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That Carman Larry Wilson was improperly dismissed from the service of the Carrier effective July 30, 1975 for 90-days actual suspension, and his personal record assessed.
2. That accordingly, the Carrier be ordered to restore Carman Wilson to service with all rights unimpaired and compensated for all time lost, including payment of all fringe benefits with six per cent (6%) interest on wages, plus, removal of assessment against his personal record during the 90-days actual 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 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 waived right of appearance at hearing thereon.

Claimant is a Carman employed at Carrier's East St. Louis, Illinois shops, with approximately six (6) and one-half ($\frac{1}{2}$) years' seniority.

Somewhere around 9:55 PM on July 17, 1975, Claimant was observed by Carrier's Trainmaster and a Special Agent, sitting across a desk from one of Carrier's Foremen, Lewis M. DeRossett, in the office on the second level of the mechanical facility. Between the Foreman and Claimant was a chess board, with the chess pieces all set up on the board for a game of chess.

An investigation was held on July 29, 1975, and, as a result, Claimant was notified by letter dated July 30, 1975, that he was being assessed "90 days actual suspension."

This suspension was for Claimant's allegedly being involved in a game of chess while on duty, rather than performing his assigned duties.

Petitioner alleges that Superintendent Needham's failure to allege reasons for declining the claim in his August 15, 1975 letter to the Local Chairman is fatal to the procedural requirement of Article V of the August 21, 1954 Agreement.

Article V of the August 21, 1954 Agreement reads as follows:

"Should such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented." (Emphasis added)

The Board finds that if said letter of Superintendent Needham did not comply with the pertinent provisions of Article V, then the defect was cured by letter of Chief Mechanical Officer Tutko to the General Chairman dated September 10, 1975. Article V does not require that the Officer receiving the claim must, in the case of declination, make the notice of disallowance and state the reasons for such disallowance. Article V says the "Carrier shall ... notify... ." Therefore, inasmuch as the Carrier, through Chief Mechanical Officer Tutko, within 60 days from the date the claim was filed, did notify Claimant's General Chairman in writing and gave reasons for such disallowance, then Petitioner's claim of a procedural defect must be rejected. (See Second Division Award 5124).

Turning to the merits of the case at hand, there is evidence to indicate that Claimant was playing a game of chess with Foreman DeRossett, although neither the Trainmaster nor the Special Agent saw any of the chess pieces being moved on the board.

In light of all the circumstances in the instant case, however, the Board finds that 90 days actual suspension was excessive. In industrial relations as well as in social relations, the punishment should fit the crime, and we are convinced that under all the facts and circumstances of this case, the penalty of 90 days actual suspension was too severe.

Therefore, we will reduce the penalty from 90 days actual suspension to 45 days actual suspension. Claimant is to be compensated for all regular time lost during the other 45 days he was suspended. There is no provision for the awarding of interest on back pay in the applicable Agreement, and, consequently, we are precluded from awarding such.

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Award No. 7341
Docket No. 7182
2-A&S-CM-'77

A W A R D

Claim upheld to the extent indicated above.

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 8th day of September, 1977.

