

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. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Consolidated Rail Corporation (RDG)

Dispute: Claim of Employees:

1. That under the current agreement, Welder Agostino Ninfo was unjustly dealt with when he was assessed with a thirty (30) actual working day suspension from the Reading Company commencing January 13, 1975.
- 2 (A) That accordingly, Welder Agostino Ninfo is entitled to be compensated for all lost wages, including overtime that he would have made as an extra board member of the Reading Wreck Train as of January 13, 1975, plus 6% interest per annum commencing as of January 13, 1975. That Mr. Ninfo be compensated for all wages lost while being denied the right to be a member of the Reading Wreck Train since January 13, 1975.
- (B) Make claimant whole for all vacation rights.
- (C) Pay the premiums for hospital, surgical and medical benefits for all time held out of service.
- (D) Pay the premiums for Group Life Insurance for all the time held out of service.

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.

Claimant was employed as a Car Repairman at Carrier's Reading, Pennsylvania Car Shop. On January 13, 1975, he was withheld from service pending a hearing in connection with his alleged failure to perform his assigned duties.

A hearing was held on January 21, 1975 in connection with:

"Your failure to properly perform the duties of scaling roof of covered hopper car Rdg 78893 on No. 4 track outside north end of Reading Freight Car Shop as assigned to you by Assistant Foreman L J Edling on Monday, November 26, 1974;

"Your failure to perform the duties of burning roof rivets on car BFF No. 162 on No. 7 track outside of south end of Reading Freight Car Shop as assigned to you by Assistant Foreman W. Ughes on Monday, December 16, 1974;

"Your objections concerning your assignment of working on roof of car RDG 41468 on No. 1 track at southeast corner of Reading Freight Car Shop as assigned to you by Assistant Foreman W M Boris on Tuesday December 17, 1974;

"Your failure to perform the duties of burning roof rivets on Car BFF No. 192 on No. 7 track outside south end of Reading Freight Car Shop as assigned to you by Superintendent Reading Car Shops J. Leone on Monday, January 13, 1975.

"In addition to the above, the following charge is added thereto:

"Improper information completed by you on Form M D - 1, March 8, 1974."

The hearing was held as scheduled at which time Claimant was present and represented.

Following the hearing, Claimant was assessed a thirty (30) day actual suspension which was measured from January 13, 1975.

We have carefully reviewed the entire record in this case, including the presentations as made to our Board by the able representatives of both sides. From the hearing record we conclude that Claimant experienced some trepidation when instructed to perform duties which required him to utilize both the portable and the fixed scaffolds. However, there is no evidence in this record that he refused to perform the work assigned to him. He either performed it at a pace slower than normal or his supervisor relieved him of the job assignment and gave him another assignment.

Therefore, based on this record, we hold that the assessment of a thirty (30) day suspension was not justified. Claimant is entitled to be compensated for the wages lost from his regular assignment in accordance with the provisions of Rule 34. There is not sufficient evidence to support the claim for extra work on the wreck train during the suspended period. Claimant admittedly had an uneasy feeling when climbing on top of scaffolds and cars, and it was not until March 15, 1975 that claimant notified Carrier that those conditions no longer bothered him and he wished to go back on the relief (wreck) train. There is no showing of health and welfare benefits loss inasmuch as claimant worked in each month during the suspended period. Therefore, that issue need not be ruled on. There is no contractual basis to support the claim for 6% interest.

A W A R D

Claim No. 1 is sustained.

Claims No. 2A, B, C, D sustained in accordance with the Findings 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.

