

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. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Elgin, Joliet & Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet & Eastern Railway Company violated Rule 35 when a three (3) day suspension was assessed to Temporary Carman John Reddy.
2. That, accordingly, the Elgin, Joliet & Eastern Railway Company be ordered to pay Temporary Carman John Reddy eight (8) hours pay at the pro rata rate for each of the three (3) working days for which he was 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 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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a findings of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

The record before us indicates that Claimant "got mad," "raised his voice" to Temporary Carman Lindsey, and used "profanity". This happened twice on August 29, 1975, once in the morning, and again after dinner. Temporary Carman Lindsey also testified that,

"When he (Claimant) bent over to pick up the torch, he came up with his fist balled up...."

The Board finds that there is substantial evidence that Claimant was argumentative and provocative with a fellow Temporary Carman, and, to that extent, shared responsibility for the incident under investigation. Moreover, we cannot say that the three (3) day disciplinary suspension was either arbitrary or an abuse of managerial discretion in light of the severity of the offense. Therefore, 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 - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of December, 1977.