

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated the current agreement particularly Rule 39 of the "A" Agreement when Electrician F. A. Williamson and Electrician Apprentice K. W. Riley were improperly removed from service at Paducah, Kentucky on May 30, 1975 after an investigation held on May 5, 1975.
2. That claimants were unjustly dealt with when carrier did not afford a fair and impartial hearing in accord with Rule 39.
3. That the Illinois Central Gulf Railroad:
 - a. Compensate claimants for all lost wages.
 - b. Make claimants whole for all vacation rights.
 - c. Pay Hospital Association dues and pay premiums on claimants insurance.
 - d. Restore all other rights or benefits including days counting toward completion of apprenticeship and clear employees records.

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.

The Claimants, Electrician B. A. Williamson and Electrician Apprentice K. W. Riley, are employed by the Carrier at the Paducah Shops, Paducah, Kentucky. The Claimants were notified by letter dated April 25, 1975, to attend a formal investigation on May 5, 1975, for the purpose of:

"determining your responsibility, if any, for (1) fighting on company property on or about 7:05 a.m. April 23, 1975, and (2) whether or not K. W. Riley struck Supervisor J. B. Hollowell, Sr. on that date."

The investigation was held on May 5, 1975. By letter dated May 30, 1975, Claimant Williamson was notified that he was found guilty of fighting; and was suspended for twenty working days. By letter dated May 30, 1975, Claimant Riley was found guilty of fighting and of striking Supervisor J. B. Hollowell, Sr., after he apparently had broken up the fight; and was suspended for thirty working days.

We find that the Claimants were given a proper charge under Rule 39. We find no procedural defects in the totality of the formal investigation sufficiently prejudicial to effect the outcome of the investigation. However, the Carrier is advised to review its procedures on this property, in line with its contractual obligation to conduct a "fair hearing".

We find that the record lacks substantial evidence to show that Claimant Williamson was fighting.

On Page 15 of the Transcript, Investigating Officer Johnson questioned Supervisor Hollowell:

"Q. You stated that both men were striking each other, did you go in and attempt to separate these employees?
A. Yes, I did."

The record does not show that Mr. Hollowell stated prior to this leading question by the Investigating Officer that "both men were striking each other". The response "Yes, I did" would reasonably appear to relate to the question "did you go in and attempt to separate these employees".

Mr. Hollowell testified on Page 16 of the Transcript with Mr. Johnson questioning as follows:

"Q. You said Mr. Williamson was down?
A. Yes.

Q. What do you mean by down?
A. He was laying across some boxes at the corner of the oven. After being knocked down, he was down over the boxes covering his head as to protect himself.

"Q. Was Mr. Riley striking him while he was in this position?
A. Yes.

Q. Did Mr. Williamson attempt to strike back?
A. Mr. Williamson was in no condition to strike back. He was addled when I got to him."

Further on Page 16 of the Transcript Mr. Hollowell testified that the event was a "vicious attack". A reasonable inference being that Riley had attacked Williamson.

Mr. Hollowell in his written report to Mr. Jones stated that he observed the Claimants in a fist fight. The burden of proof is on the Carrier to demonstrate to this Board that substantial evidence exists in the record before the Board to support its disciplinary action. The entirety of Mr. Hollowell's testimony is insufficient to be classified as substantial evidence in support of the Carrier's contention that Mr. Williamson was guilty of fighting with Mr. Riley. Supervisor Taylor testified as to how Mr. Hollowell was struck by Mr. Riley. He did not testify that Mr. Williamson ever struck or attempted to strike a blow. Supervisor Dotson wrote to Mr. Jones that he observed the Claimants in a "fist fight". Yet having made that statement he testified on Page 11 of the Transcript:

"It was a very short fight and was not over a half a dozen blows passed and I did not see Mr. Williamson throwing any blows. He had his head down with his arms covering his face."

(Mr. Dotson testified that he heard Mr. Hollowell holler "break it up", and he then looked around. There is a possibility then that Mr. Williamson could have struck Mr. Riley prior to his looking around, but clearly this Carrier witness did not see any such thing.)

Electrician Anderson, called as a Carrier witness, testified that Mr. Riley pushed Mr. Williamson and he fell against certain boxes. Neither Electrician Anderson nor any of the witnesses called by the Claimants testified to Mr. Williamson striking Mr. Riley at any time.

We find that the record does not contain substantial evidence that Mr. Williamson engaged in a fist fight with Mr. Riley. While the evidence shows Mr. Williamson told Mr. Riley that if he didn't like the contents of a letter to "butt out", clearly this is not a basis for discipline of Mr. Williamson for "fighting". Nor is a person guilty of "fighting" where the substantial evidence of record relied on by the Carrier shows the individual to be the object of a physical attack.

We find that substantial evidence exists in the record to support the Carrier's finding that Mr. Riley was guilty of fighting and striking Supervisor Hollowell. We find that the discipline imposed on Mr. Riley is neither arbitrary, capricious or excessive.

A W A R D

The Award is that the Carrier unjustly suspended Claimant Williamson for a period of twenty days and he shall be compensated for the wage loss resulting from such suspension. Item 3(c) of the Claim as it relates to Mr. Williamson is rejected as lacking Agreement support. The Claim relating to Claimant Riley is denied.

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 6th day of January, 1978.