

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

Parties to Dispute: (Hubert P. Brennan
(
(
(Boston and Maine Corporation, Debtor

Dispute: Claim of Employes:

While employed as a Carman at Lawrence, Massachusetts on January 29, 1976 I was charged with improper performance of duty.

I was not properly informed of the charges against me, I was denied a fair hearing and I did my work properly and in accordance with the rules.

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.

As a result of a situation which developed in Carrier's Lawrence, Mass., Yard on January 29, 1976, wherein a Federal Inspector shopped twenty (20) cars in a train scheduled to depart from that yard after claimant car inspector had supposedly inspected the train, claimant was notified to attend a hearing:

"***to develop the facts and place your responsibility, if any, in connection with the charge (incident) outlined below. Your improper performance of Car Inspector duties at Lawrence Yard during your tour of duty on Thursday, January 29, 1976."

At the hearing, claimant acknowledged that he had received the notice of hearing and that he elected to represent himself during the proceeding. The General Chairman and Local Chairman of the Carmen's Organization were permitted to remain during the hearing, but as stated in the hearing record by claimant:

"Mr. Hardy and Mr. Jones are here as observers. I represent myself sir."

As a result of the evidence developed at the hearing, claimant was restricted from working as a Car Inspector "at other than locations where direct car department supervision is available."

Throughout the appeal processes on the property and in listing the appeal with our Board, claimant has alleged that:

1. He was not properly informed of the charges;
2. He was denied a fair hearing; and
3. He properly performed his duties on the dates in question.

In his ex parte submission to this Board, claimant injects, for the first time, a request for "reimbursement for all costs, expenses and financial losses suffered***" including reimbursement of "legal fees of Seven Hundred and Fifty Dollars (\$750.00)."

From the record the Board notes that claimant appeared at the hearing as instructed, acknowledged receipt of the hearing notice and, at no time during the entire proceeding, indicated in any manner that he had not been properly informed of the charges or that he was unaware of the reason for the hearing. In fact, he proceeded with considerable aplomb to pursue his own defense and offer his own testimony. It is a well defined and accepted maxim that the parties to a dispute may not participate in a proceeding without raising any objection and then after the proceeding is concluded be heard to complain relative to the propriety of the proceeding. See Second Division Award Nos. 7153 (Sickles), 7009 (O'Brien), 6373 (Bergman), 5360 (Knox), 5042 (Johnson). This case is no different. Claimant was properly informed of the charges.

As to the contention that he was denied a fair hearing, that too has no merit because claimant himself answered "yes" in the hearing record to the question "Has this investigation been conducted in a fair and impartial manner in accordance with your scheduled requirements?" He cannot now contend that it was not fair. See Second Division Award Nos. 6188 (Dugan), 6004 (Gilden), 4035 (Johnson), and 3874 (Anrod).

Regarding the contention that claimant had properly performed his duties, we have again looked to the record and can find no basis on which to reach such a conclusion. Despite claimant's evasive and sometimes contradictory answers, it is abundantly clear from the testimony that he failed in his responsibility to properly inspect the train in question. The finding of twenty (20) defective cars - most with obvious, clearly discernable defects - by the Federal Inspector in a train which claimant had allegedly inspected and made ready for road movement does not indicate a proper performance of duty by a qualified Car Inspector.

The restriction that claimant work at a location where direct supervision is available was not arbitrary, capricious or excessive in light of the proven dereliction. The claim as listed with this Board is, therefore, denied.

Because the monetary claim was neither part of the claim as handled on the property nor included in the subject as listed with our Board, it is dismissed. Also, because the claim for reimbursement for legal fees was neither part of the claim on the property nor included in the subject as listed with our Board nor is it provided for in any Rule of the Agreement, it is dismissed.

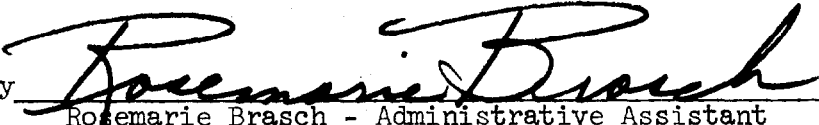
A W A R D

Claim disposed of in accordance with the findings.

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 31st day of January, 1978.

11-11-11

11

11

11