

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. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling agreement when they suspended Carman W. E. Kirkes for a period of sixty (60) days after holding three investigations on him for the same alleged incident, No. Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Kirkes at the pro rata rate for each work day lost during the suspension covering period February 26 to April 27, 1975.

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.

The Claimant, Carman W. E. Kirkes, is employed by the Carrier at North Little Rock, Arkansas. A formal investigation was held on February 14, 1975; to develop facts and place responsibility, if any, for the Claimant's allegedly being insubordinate to his Supervisor at approximately 3:00 A.M., January 4, 1975, while on duty. Following the investigation, Claimant was advised by the Carrier by notice, dated February 26, 1975, that he was suspended from service for a period of sixty (60) days.

The Organization contends that Carrier conducted three investigations and administered discipline on two occasions, the first discipline being a letter of reprimand resulting from the "investigation" held on the night of January 4, 1975, and the second discipline being that of the 60-day suspension. The Organization contends that a General Foreman knows the true

meaning of "reprimand", and that the only reason Carrier was unable to produce the reprimand at a later time was that it was removed after the Carrier realized its error in disciplining the Claimant twice for the same incident. Indeed the record does show that General Foreman T. W. George did testify that "a record of this conversation and reprimand in (is) on file". This letter was introduced in evidence in the on property handling of this case, and we find that the letter was not a reprimand as used in any disciplinary sense, but rather a statement of Mr. Duncan's and Mr. Black's perception of the incident for the information of General Car Foreman Copeland. We find, very narrowly, that the meeting with Mr. Duncan and later the meeting with Mr. George was not in violation of Rule 32(a).

We find from the entire record that there was evidence of insubordination. We find that record also discloses evidence and circumstances which renders the discipline of a sixty-day suspension harsh and excessive.

Mr. Black, the Acting Foreman primarily involved in this incident with the Claimant, testified in part:

"...at which time Kirkes seemed to stop his work and walked over to heater where I was standing and I asked him to leave the heater and assist Abernathy on the bridge plate work at which time he refused to do so, so I said well, let's both walk around there and after I left the fire he walked around behind me. By the time we got to where Mr. Abernathy was working he began to tell me how sorry I was, called me sorry, called me a son-of-bitch because I wouldn't let him stand by the fire. I tried to explain to him that after having 2 other carmen which were Malchaski and Hardcastle, help him on the car, I couldn't let him stand by the fire while they did what I considered to be part of his work. I tried to talk to the man and he continued to call me obscene names, the names consisted mostly of Sorry SOB. Mr. Abernathy heard the argument and raised his welding hood and asked what was going on and I told him that I had instructed Kirkes to help him and Kirkes had gotten made and then Abernathy tried to settle Kirkes down. Kirkes asked me a couple of times to take him to the office and I tried to convince him that we could settle it between ourselves, like grown men, adults, finally I requested him to come to the office with me to discuss the matter further. We walked toward the office and when we got to the office door he refused to go in telling me that he didn't have to without union representation. I told him that he had to come to the office but he didn't pay any attention to me, just walked away. I then went to the office, explained

"briefly to Mr. Tom Duncan, General Car Foreman, and requested him to get Mr. Kirkes to the office so we could discuss the matter. Mr. Duncan went out, got Mr. Kirkes, brought him to the office and we discussed it. That's basically how it ended."

Later Mr. Black testified:

"Q. What work did you specifically instruct carman Kirkes to perform?

A. To assist Mr. Abernathy in any way that he could."

Mr. Black testified:

"Q. Has there been any bad feelings between you and carman Krikes prior to this incident?

A. Yes.

Q. Did Carman Kirkes owe you money?

A. Yes he did.

Q. Have you ever talked to other carmen at the repair track about carman Kirkes' failure to pay you the money he owed you?

A. I probably discussed it.

Q. Did you ever call carman Kirkes a no good SOB that you knew you would never get your money from him in front of the carmen working at the repair track?

Objection by Mr. Sheridan"

Mr. Black testified:

"Q. Have you had previous trouble with using foul language to some of the men you are supervising?

A. On one occasion.

Q. Did you apologize to carman Hargrave for using this language?

A. Yes I did."

Mr. Kirkes testified:

"Q. Do you and Foreman Black have any personal problems between each other?

A. During the general time of the incident there was a personal debt between myself and Mr. Black, I owed him a certain sum of money, he repeatedly asked me for it while at work, even though I had explained to him I intended to pay him and that as I was short of money, would he please mind waiting."

Mr. Abernathy testified:

"Q. Did you see Car Foreman Black push or lay a hand on carman Kirkes?

A. Yes.

Q. What work could Kirkes have helped you at when Black brought him down to the end of the car that you were working on?

A. None."

Mr. J. L. Wilcox testified in part:

"...Mr. Black told him in a sarcastic manner to get down to the other end of the car and Bill said I just walked up to warm my hands and Mr. Black told him to go ahead and go down to the other end of the car and help Abernathy. Bill started to walk off, Mr. Black said, come on we'll both go down there and Mr. Kirkes asked him what was wrong with him, and he said I mean it now leg's get to the other end of the car so they walked off toward the other end of the car and Bill asked him again, what was wrong with him and as they got near the other end of the car when I turned around and walked off."

We order that the discipline be reduced to 30 days actual suspension and that the Claimant be made whole for his wage loss suffered, less any outside earnings.

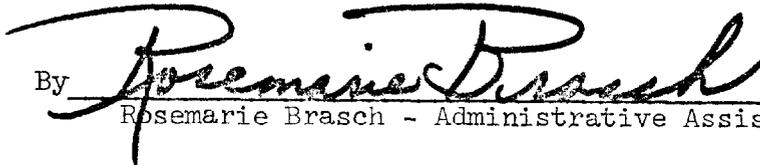
A W A R D

Claim sustained in part as per 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 4th day of April, 1978.