

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 21, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ Southern Railway Company

Dispute: Claim of Employes:

1. That under the current Agreement Carman J. D. Butler, Norris Yard, Irondale, Alabama was improperly suspended from service for fifteen (15) calendar days from February 29, to March 15, 1976.
2. That accordingly, the Carrier be ordered to pay Carman J. D. Butler for all time lost from February 29, to March 15, 1976.

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 were given due notice of hearing thereon.

This is a discipline case. The claimant herein, Carman J. D. Butler, was suspended from service for fifteen (15) days for failing to properly perform his duties, to-wit: completing and signing a billing repair card while having knowledge that the car in question was still in need of repair.

The organization has first raised a procedural question. It is alleged that the claimant was not afforded a fair and impartial hearing as required under Rule 34 in that Mr. J. T. Freeman, the master mechanic, who conducted the hearing, acted in a multiplicity of roles such as would foreclose the possibility of a fair and impartial hearing. This issue was not raised on the property and cannot be raised before this Board at the first instance. Therefore we will consider the merits of the case without discussion of the procedural issue.

The claimant has admitted that he had knowledge of the defects yet to be repaired when he executed the billing repair card. The claimant defends this action on the grounds that Car Foreman Campbell instructed the employees to kick the car down the hill. The claimant testified that this instruction was interpreted as an order to move the car even though certain defects had not been repaired which would be in violation of the AAR regulations.

There is no question but that the crew working on the car in question were put under pressure to move the car. The car had been on the repair track the entire day, a fact which had obviously become of concern to the foreman. In order for this Board to find in favor of the claimant, we must however, find that the actions of the claimant in executing the billing repair card in advance of the necessary defects being cured was in response to an order from the foreman, which order could be either explicit or implied. We have examined the transcript in this case carefully and are unable to find therein sufficient evidence to support the claimant's contention that his actions were in response to the directions of his foreman. We cannot make the finding that claimant was explicitly or implicitly ordered to certify the repairs as having been complete when in fact they were not.

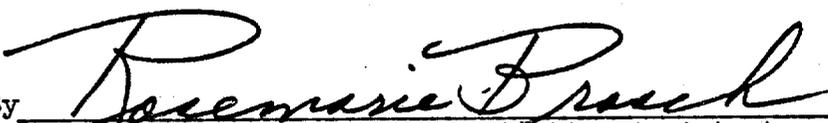
We find that the agreement was not violated.

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 1st day of November, 1978.