

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That as a result of an investigation held on Tuesday, July 20, 1976 Car Inspector Glen Sharpe was dismissed from the service of the Elgin, Joliet & Eastern Railway Company. Said dismissal of Car Inspector Sharpe is arbitrary, capricious, unfair, unjust, unreasonable, excessive and in violation of the current working agreement, specifically Rule 100 (old Rule 35).
2. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as Carrier, be ordered to reinstate Car Inspector Glen Sharpe, hereinafter referred to as Claimant, to the service of the Carrier with seniority, vacation and all other rights unimpaired in addition to compensation at the pro rata rate eight (8) hours for each day Claimant is withheld from the service of the Carrier until such reinstatement is in effect.

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.

Following an investigative hearing, Claimant was dismissed from service on July 26, 1976 for failure "to make a proper inspection of EJ&E #34543 located on #27 Hump July 6th, 1976." The record shows that the car developed a hot box shortly after leaving the Yard, and later inspection revealed that there was a flat back wedge missing from a journal box. Evidence further showed that the Claimant was responsible for inspection of the car prior to its leaving the yard.

The Organization disputes the dismissal action on the grounds that the Claimant was not present at the investigation hearing and further that no convincing proof was set forth to show that the Claimant was remiss in his duties.

Rule 100 of the applicable Agreement reads as follows:

- "(a) No employe should be disciplined without a fair hearing by a designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing he is entitled to be apprised of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by counsel of his choosing, selected from an employe of his own craft.
- (b) If the judgment shall be in his favor, he shall be reinstated and compensated for the wage loss, if any, suffered by him.
- (c) Any employe willfully violating any of the rules of this Agreement is subject to suspension."

Rule 100 clearly establishes an employe's "right" to be at his investigative hearing. Claimant was afforded this right by letter notice dated July 7, 1976, for which the Claimant signed receipt the same day. He thus had 13 days prior to the investigative hearing on July 20, 1976, to prepare his defense or to request a postponement. He did not appear at the hearing and had not given notice of reason for his failure to appear either to the Carrier or to the Organization. In the course of the claim processing, no reason was ever set forth for the Claimant's failure to appear.

The Board finds that the Carrier properly went forward with the hearing on July 20, 1976. Claimant's representative was present for the defense of the claimant's position. To defer the hearing simply on the basis of the employe's non-appearance would, in effect, permit the employe to postpone indefinitely the hearing and any consequent discipline. This would not serve the purpose of Rule 100. Claimant simply failed to exercise the "right" provided him by the rule.

As occasionally happens in such matters, the determination of the claimant's responsibility for failing to detect a faulty journal box during inspection is based on circumstantial evidence. Such evidence was, however, offered to the hearing officer in detail and was sufficient for the hearing officer to reach a reasonable conclusion that the claimant was negligent in his duties. The Board finds no reason to second-guess this finding.

Form 1
Page 3

Award No. 7755
Docket No. 7653
2-EJ&E-CM-'78

As to the degree of discipline, Carrier gave proper consideration to the employe's past record, which included two disciplinary suspensions for absenteeism. The Board finds the degree of penalty within the proper discretionary judgment of the Carrier.

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 29th day of November, 1978.