

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: ( System Federation No. 2, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Electrical Workers)  
(  
( Houston Belt and Terminal Railway Company

Dispute: Claim of Employees:

1. That Mr. Dale Gray was unjustly dealt with when he was assessed with fifteen (15) days suspension from the service of the Houston Belt and Terminal Railway Company effective 4:30 P.M., September 24, 1976.
2. That the Carrier violated the time limit provisions of Article V(a) of the August 21, 1954 Agreement, thus, the claim should be allowed as presented.
3. That, accordingly, the Houston Belt and Terminal Railway Company be ordered to compensate Mr. Dale Gray, as follows:
  - (a) Compensation for all time lost plus 6% annual interest;
  - (b) Return to service with seniority rights unimpaired;
  - (c) Made whole for all vacation rights;
  - (d) Made whole for all health and welfare and insurance benefits;
  - (e) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance;
  - (f) Made whole for any other benefits that he would have earned during the time withheld from service;

and, further, any record of this disciplinary action be removed from his personal record.

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.

This is a fifteen (15) day disciplinary suspension assessed as a result of Claimant's alleged failure to carry out instructions given to him by his supervisor to repair malfunctioning yard speakers in Settegast Yard on July 26, 1976.

Both parties have alleged a violation of the time limit rule; the Carrier charging that there was no timely appeal of the claim by the Local Chairman to the Superintendent and the Organization maintaining that the Local Chairman had delivered his appeal of this case to the Superintendent on November 22, 1976, and that Carrier did not timely respond to this letter. We are thus left with totally conflicting arguments on this issue, and note that the Local Chairman had originally intended to send his letter certified mail, return receipt requested, but opted for the personal delivery to avoid mishandling by the postal service. Had the Local Chairman followed through with his plans, and a return receipt form issued, there would be no doubt that we would find for the Organization. But, since neither side can produce evidence supporting their allegations regarding the time limits, we find under the unique circumstances of this case, that there was no violation of the time limits by either party. We would point out that the use of return receipt requested, certified mail by both parties, or requesting signed acknowledgement of hand delivered mail, as well as expedient handling of grievances by both, would eliminate such quarrels in the future.

Turning to the merits, we do find more than substantial evidence establishing that Claimant had failed to follow through with the instructions of his supervisor. At about 10:50 a.m. on the day of the incident, he was instructed to repair the speaker system at a point in Settegast Yard. The testimony of Claimant, and his fellow communications technician, indicated that they did inspect the deficient and inoperative speakers but, on the basis that they did not have any equipment in the truck with them to make permanent repairs, simply left the speaker system and proceeded to engage in other work. This was certainly an error in judgment, which was compounded by the fact that Claimant did not even report back to his supervisor on the status of his assigned project. Claimant supposed that train and yard service personnel could find other ways to communicate and then proceeded to perform other duties and ultimately left the property at his normal quitting time without taking any action either to repair the situation or to report the matter to his supervisor. In a matter so important as yard operation and train communication, the Claimant knew or should have known, based on his experience, that "supposition" is hardly an excuse for nonfeasance of duty.

Based on the circumstances we find the discipline assessed, 15 days, was a fair measure of Claimant's responsibility and we will deny the claim.

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 Brasca - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November, 1978.