

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 {
 { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling agreement when it unjustly assessed Carman Stephen G. Tsocheff a five (5) day deferred suspension on November 4, 1975, which Carrier reaffirmed on December 31, 1975, after investigation held November 20, 1975.
2. That the Norfolk and Western Railway Company violated Article V of the August 21, 1954 National Agreement and Section 2 of the Railway Labor Act when Car Foreman R. L. Brown arbitrarily engaged in the processing of the claim on the property.
3. That the Norfolk and Western Railway Company be ordered to remove the five (5) day deferred suspension from the service record of Carman Stephen G. Tsocheff.

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.

Claimant had been employed by Carrier for some fifteen (15) years. He was regularly assigned as Carman Stenciller at the paint tracks at Carrier's Car Shop in Brewster, Ohio. While in the process of stencilling a car, on October 25th, a five (5) gallon can, on which Claimant had been standing, tipped, causing him to injure his ankle at about 8:30 PM. There were no disabling effects therefrom. Claimant reported said injury and its circumstances to his Foreman some two hours later.

The Car Foreman, R. L. Brown, on November 4, 1975, assessed Claimant a five (5) day deferred suspension for "violation of Safety Rule 1028 on October 27, 1975". Said Rule reads:

"Standing on improvised scaffolding or support made of boxes, barrels, chairs, etc. is prohibited."

The Employee, pursuant to Rule 13(D) of the current Schedule Agreement made written request for a formal investigation. It was held November 20, 1975. The General Foreman conducted said investigation. The Car Foreman, R. L. Brown, as a result of that hearing advised Claimant "that the five (5) day deferred suspension will stand on your record".

Appeal therefrom was registered with the Assistant Car Foreman. Said appeal was denied by Car Foreman Brown. The subsequent appeals to the General Foreman, Master Mechanic and Vice President-Administration was also denied.

Schedule Agreement Rule 13 (D) reads:

"An employee ... and is ... or otherwise reprimanded, will be apprised of the precise charge against him and shall have a fair and impartial hearing, provided written request is presented by the man or his authorized representatives to the official who ... or reprimanded him, within ten (10) days of the taking of such disciplinary action....

... appeals taken shall be in accordance with paragraph (A) of this Rule 13."

Said paragraph (A) in pertinent part, reads:

"... the decision may be appealed ... to the higher officials designated to handle such matters, each in his respective order ..."

The officials so designated at Brewster are: "Assistant Car Foreman - General Foreman - Car and Master Mechanic - Car.

Article V of the August 21, 1954 National Agreement provides:

"All claims and grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same ... should any such claim or grievance be disallowed, the Carrier shall ..."

There is merit to some of the Employees procedural contentions. Here, Car Foreman Brown, on November 4, 1975 assessed the discipline complained of. He preferred the charge for the investigation November 17, 1975. Car Foreman Brown was a witness at the November 20th investigation. He reviewed the record of that investigation, including his own testimony, and on December 31st, Car Foreman Brown re-affirmed his previous assessment of discipline. Lastly, Mr. Brown denied the appeal of such discipline, addressed to the Assistant Car Foreman, in his (Brown's) name. While the fact that Mr. Brown was not the hearing officer on November 20th and thus partially distinguished his conflicting roles from those reflected in the Awards cited in support of the Employees' contention, the fact remains that the judgmental and appellate role were here so intertwined as to make a nullity of the discipline assessed and its appeal.

In the circumstances this claim will be sustained.

A W A R D

Claim sustained.

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 16th day of May, 1979.