

When claimant was unable to find the required lugs, he looked up their part number. After asking the storeroom attendant for the lugs by part number, he was advised that they were not in stock and would have to be ordered.

The claimant advised his temporary supervisor of the fact that the lugs were not available to him, because they were apparently out of stock and also gave the parts number to the temporary supervisor.

Before the temporary supervisor could verify the absence of the lugs from stock, the regular supervisor appeared to assume his duties. The temporary supervisor advised the regular supervisor of the problem of the unavailability of the lugs and of their part number.

The claimant's regular supervisor approached him concerning the completion of the job assignment. Following a discussion between them, concerning the availability of the lugs and the part number for them, the regular supervisor ordered claimant to report to his superintendent. The claimant and the superintendent had a short conversation, in which the superintendent asked the claimant if he was going to follow the orders of the regular supervisor in looking for the missing lugs. The superintendent alleged that the claimant refused to respond to his inquiry as to his willingness to obey the order of his regular supervisor. Further, the superintendent stated that the time between his question and the failure to respond was approximately a minute. The superintendent suspended the claimant based upon the alleged act or insubordination in refusing to respond to his question.

The basic question before the Board is whether the conduct of the claimant was sufficient to warrant an immediate suspension under the controlling agreement in Rule 6-A-1, which provides as follows:

"(a) ... employees shall not be suspended nor dismissed from service without a fair and impartial trial...

(b) When a major offense has been committed an employee suspected by the Company to be guilty thereof, may be held out of service pending trial and decision."

The Board has analyzed the nature of the conduct of an employee which would qualify as a major offense in many prior cases. In each case, the circumstances surrounding the conduct of the employee and the supervisor involved are controlling factors. However, it is the consensus of the prior awards that such immediate suspension may be justified when the employee's conduct presents a hazard to his own safety or to the safety of others, or amounts to gross misconduct, or that the failure to remove the employee from service would impede the carrier in the proper and efficient conduct of its business. This consensus is reasonable in light of the strong language quoted above, which requires a hearing before discipline is handed out to the employee.

In the instant case, the conduct of the claimant presented no hazard to himself or to others. Further, the proper and efficient conduct of its business did not require the carrier to immediately remove the claimant from service. Finally, the conduct of the claimant cannot be considered to amount to gross misconduct. Therefore, the immediate suspension of the claimant was a violation of the agreement in 6-A-1(a) and (b).

The Board has held in many cases where the violation of a claimant's right to hearing before discipline was imposed, that the discipline was arbitrary and capricious. The Board finds that the suspension of the claimant in this case, was not proper and that both claims one and two are valid.

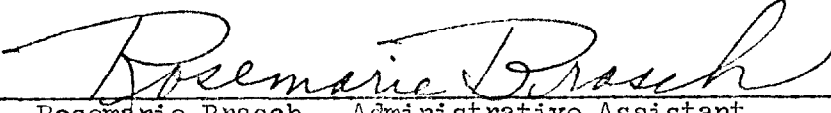
A W A R D

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 1st day of August, 1979.

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Electrical Workers)
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Carrier was unjust, arbitrary, and capricious when it suspended Electrician H. Kruppenbacher from service on December 9, 1976, in violation 6-A-1 and 6-A-4(b).
2. That, accordingly, the Consolidated Rail Corporation (Conrail) be ordered to (a) have the charge cleared from the record of H. Kruppenbacher and (b) that Electrician H. Kruppenbacher be reimbursed for all time lost, sick and insurance benefits due him for the period that he was held out of service: December 9 (4 hours 15 minutes), December 10, 11, 12, 15, 16, and 17 (8 hours each) for a total of 52 hours and 15 minutes.

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 was suspended from service on June 9, 1976, for an alleged act of insubordination to a supervisor on that date, by failing to respond to a question within approximately one minute's time. He was held out of service until December 18, 1976, for a total of 52 hours and 15 minutes. Following a hearing, the carrier issued a disciplinary suspension for the 52 hours and 15 minutes during which he had been held out of service prior to hearing.

On December 9, 1976, when claimant reported for work, he was assigned to repair locomotives. In the course of performing such repairs, he was required to replace terminal lugs on brake cables.