

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 105, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Electrical Workers)
 { Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That at Portland, Oregon Communications Shop, the Union Pacific Railroad Company on September 22, 1977 unjustly assessed Equipmentman P. J. Rotherham personal service record with thirty (30) days (deferred) suspension.
2. That Equipmentman P. J. Rotherham's personal Service Record be cleared of the thirty (30) days deferred suspension.

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.

The essential fact developments in this case are clear. Claimant was charged with violating Union Pacific Rules 702(A) and 702(B) respectively which read as follows:

Rule 702(a) "Employees subject to call must not absent themselves from their usual calling place without notice to those required to call them."

Rule 702(B) "Employees must comply with instructions from proper authority."

An investigative hearing was held on September 15, 1977, pursuant to Agreement Rule 21(H) wherein the allegations were affirmed and claimant was assessed a thirty (30) days deferred suspension penalty. This decision is appealed to us on both procedural and substantive grounds.

Accordingly, after reviewing the record we do not find any evidence that claimant was treated improperly. On the contrary, we find that he was accorded a fair and impartial hearing. There is sufficient probative evidence to support the charges and no persuasive rationale to disturb the penalty. Claimant's behavior under the particular circumstances of his employment was impermissible and thus we are compelled to accept carrier's finding.

However, the matter of penalty is now academic since the Agreement provides that a suspension will be cleared if another suspension is not assessed within six (6) months.

Claimant was not assessed a suspension penalty during the subsequent six (6) months and the question is now moot. Based on the foregoing analysis and discussion 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 Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of August, 1979.