

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute:

{ System Federation No. 109, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
  
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

- (a) That the Carrier violated the controlling Agreement when on August 12, 1977, it assessed 45 days actual suspension (August 15 - 19; 22 - 26; 29 - 31; September 1 - 9; 12 - 16; 19 - 23; 26 - 30; October 3 - 7; 10 - 14, 1977) to Car Repairer Jay G. Gensemer, ConRail Repair Facility, Reading, Pennsylvania, as a result of hearing and investigation conducted on July 26, 1977.
- (b) That accordingly the Carrier be ordered to compensate Car Repairer Jay G. Gensemer the 45 days actual suspension as well as any other compensation the Claimant would have earned during the 45 day period he was serving his discipline; and further that the Carrier remove all record of this discipline and that the Claimant's service record be restored unimpaired.

### 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.

Claimant was observed by carrier's Supervisor of Personnel fully undressed under a shower head in the shower room at approximately 2:38 p.m. on July 2, 1977. This was prior to the completion of claimant's shift. Claimant was charged with quitting early and leaving his assigned work area prior to the scheduled quitting time of 2:50 p.m. An investigative hearing was held and claimant was assessed a 45-day suspension. The organization protests this suspension on the grounds that carrier failed to cite a rule infraction in the charges against claimant.

A review of the record reveals that claimant was in the washroom, cleaning up prior to the completion of his shift. It also reveals that he did not have permission to be there. It can only be concluded from the record that claimant was attempting to wash up early. Other employees were also observed in the washroom prior to the end of the shift, but no charges were brought against them.

The act of quitting or leaving a work assignment prior to the authorized quitting time constitutes a theft of time; discipline should result. This board need not elaborate on the justification for discipline in such situations. It should be apparent to both parties.

Carrier suspended claimant 45 days for this infraction. It based its decision on the length of the suspension on claimant's prior record (a five day suspension for insubordination). An award by this Board in Docket No. 8067 upheld this suspension. It also based its decision on the severity of the instant infraction.

Based on the record before it, this Board concludes that a 45-day suspension is too severe a penalty to impose. Carrier is certainly aware that, on many occasions, this Board has stated that it would not substitute its judgement for that of the carrier when violations are proven and discipline is reasonable. It should also be aware that this Board has consistently recognized that employee discipline should be progressive and viewed as corrective in nature, not punitive. While Claimant's past record should be considered by carrier in the assessment of a penalty, the record before us reveals that there was only one incident of prior discipline. The penalty imposed in that case was a five-day suspension. We find it difficult to justify a 45-day suspension for a second infraction as a reasonable escalation in a progressive discipline procedure.

Carrier could have made its point in this case with a suspension of ten days. This level of penalty would be more in keeping with the progressive discipline procedure that should be employed by carrier. Claimant should not, however, read this reduction of penalty as a vindication of his action. It is not intended in that light. Claimant should also realize that he is fast developing a very poor work record; further rule infractions or insubordinate behavior may result in far more severe discipline than imposed in this instance.

#### A W A R D

The 45-day suspension should be reduced to a ten-day suspension. Claimant shall be reimbursed for time lost beyond the 10-day suspension.

Form 1  
Page 3

Award No. 8157  
Docket No. 8068  
2-CR-CM-'79

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 31st day of October, 1979.