

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. 6, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That under the terms of the applicable Agreement the Carrier unjustly suspended Carman L. H. Jones for 60 days.
- (2) That accordingly, the Carrier be ordered to compensate Carman L. H. Jones for all of his work days in the 60 days of 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 employees 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 Claimant is a carman who had 28 years of service when the following events occurred. On January 3, 1978, he was working with another carman in the Carrier's yard at Fort Worth, Texas. At approximately 1:45 p.m., the yardmaster issued an instruction to the Claimant to buckle up the cars on Track No. 18 after he finished work on Train No. 20. This instruction was given by means of radio communication.

The conversation was overheard by the Carrier's terminal superintendent. Further, the terminal superintendent and the yardmaster stated that the Claimant acknowledged the order.

Claimant has denied that he received a clear order to buckle up the cars on Track 18. Although he admitted to a conversation with the yardmaster concerning work on Track 18, he denies that there was a clear order to perform such work. The Claimant contends that his conversation with the yardmaster was to engage in the work on a TP drag prior to performing the work on Track 18. Claimant contends that since the work on the TP drag was not available, he was waiting for further instructions before proceeding to the work on Track 18.

Rather, Claimant contends that the proceedings at the hearing were not proper because the notice mentioned his failure to perform the work on Track 18 at 1:45 p.m. He correctly notes that both he and the other carmen were continuing to work on Train 20 through approximately 2:00 p.m. He argues that the erroneous time specified in the charge and in the disciplinary notice is sufficient to void the suspension.

The Carrier argues that the Board functions in an appellate capacity and it cannot resolve credibility issues presented by the testimony. The Carrier argues that many prior decisions have upheld the imposition of discipline where there is substantial evidence in the record to justify the finding of guilt.

It is clear from the transcript that the Claimant did engage in a discussion concerning the work on Track 18. The Claimant admits such conversation, but justifies his failure to perform such work on the basis of unclear instructions. Such a contention cannot be accepted.

The decisions of this Board have clearly recognized the appellate nature of the Board's work. Thus, it was stated in Award No. 7325 as follows:

"Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion."

Based upon the record in this case, the Board cannot find that the Carrier acted in either a capricious or arbitrary fashion when it issued the disciplinary action to the Claimant. It is the conclusion of this Board that there was substantial evidence presented at the hearing to justify the Carrier's finding and its issuance of discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

Form 1
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Award No. 8201
Docket No. 8021
2-CRI&P-CM-'79

By

A handwritten signature in cursive script, reading "Rosemarie Brasch". The signature is written in dark ink and is positioned above a horizontal line.

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of December, 1979.