

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

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated the current agreements, particularly Rule 39 of the "A" Agreement, when Electrician R. F. McDade and Electrician Apprentices T. D. Barney and J. B. Benedik were unjustly dealt with and unjustly suspended from the service of the Illinois Central Gulf Railroad at Woodcrest Shop on December 2, 1975. R. F. McDade was returned to service on December 26, 1975 and T. D. Barney and J. B. Benedik were returned to service on December 17, 1975.
 - (a) That the Claimants were not guilty as charged.
 - (b) That the Claimants were not afforded a fair hearing in accordance with Rule 39.
2. That, accordingly, the Illinois Central Gulf Railroad be ordered to compensate the Claimants for all lost wages, with all rights and benefits restored and be made whole for lost benefits such as vacation rights, health and welfare insurance premiums, credit for completion of apprenticeship and to clear the records of the Claimants.

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.

Claimants were employed at Carrier's Woodcrest Shop Car Department. On October 17, 1975 Claimants and a fourth employee not party to this dispute, were discovered by two Carrier supervisors in the women's lounge of an Amtrak car. According to the testimony of the supervisors, Claimants were in a state of repose on pillows on the floor of the lounge. According to Claimants they were either working in the car or making themselves unavailable to Amtrak inspectors. There is substantial evidence to support a conclusion that supervisors had informed Claimants on prior occasions not to be standing around or congregated in groups when Amtrak inspectors were in the area, but there is no support for the assertion

that Claimants had been encouraged to "hide" from Amtrak inspectors. In any event, Claimants were notified to attend an investigation which was conducted on November 12 and 13, 1975 by Shop Superintendent-Car E. M. Muehlenbein. Under date of December 2, 1975 Mr. Muehlenbein advised Claimants of their suspension without pay for "occupying the Lounge in Amtrak Car undergoing repairs and not performing duties". Claims were filed on behalf of each of the named Claimants and were denied by General Superintendent H. B. Herrin on March 11, 1976. Thereafter the claims were handled without resolution on the property and appealed to the Board.

We find that we cannot reach the merits of the disciplinary action because of a serious and fatal defect in the handling of the hearing and investigation by Carrier on the property.

Immediately following the alleged incident on October 17, 1975 a "pre-investigation" meeting was convened by General Superintendent Herrin in his office. In attendance at that meeting were, among others, the Claimants and Shop Superintendent-Car Muehlenbein. It should be understood that we are not holding that such meetings are improper per se. However, the record in this case unmistakably establishes that statements by General Superintendent Herrin at that particular meeting effectively prevented Claimants from receiving the fair and impartial hearing to which they were entitled under Rule 39.

The unrefuted record establishes that General Superintendent became very angry with Claimant McDade and then told Claimants, in the presence of Shop Superintendent-Car Muehlenbein, that he would personally see to it that they were severely disciplined. This clearly established prejudgement by Herrin, who was the second-step appeal officer in the grievance machinery. Even more damaging to Claimants rights to an impartial investigation, however, was the fact that Herrin made these statements in the presence of his subordinate, Mr. Muehlenbein, who subsequently served as hearing officer and assessed the discipline.

Moreover, the record shows that within minutes of that pre-investigation meeting Mr. Muehlenbein approached each of the Claimants and proposed that McDade "voluntarily" accept a six month suspension and each of the other Claimants a three month suspension. It is a reasonable conclusion that Mr. Muehlenbein was acting under instructions from the highest officer at the Shop, General Superintendent Herrin. In our judgement, the actions and statements by the General Superintendent created an atmosphere so prejudicial to Claimants and so tainted with prejudgement that they were denied the fair and impartial investigation to which they are entitled under Rule 39.

In the circumstances it would be unreasonable and unrealistic to expect that the Hearing Officer, who also assessed the discipline, would be unaffected by his superior officer's stated view of the case. We must sustain the claim without making any judgement regarding culpability or appropriateness of penalty.

A W A R D

Claim sustained.

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Award No. 8257
Docket No. 7684
2-ICG-EW-'80

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 5th day of March, 1980.