

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. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman E. T. Terry was unjustly deprived of his rights and compensation when he was improperly suspended from service on June 12, 1978 for thirty days dating from June 14, 1978 to and including July 13, 1978, after 28 years of service with the Carrier, as a result of investigation held June 2, 1978.
2. That accordingly, the Southern Pacific Transportation Company be ordered to compensate Carman E. T. Terry for the days held out of service in accordance with the provisions of Rule 39, and that he be made whole for all vacation rights, pension benefits including Railroad Retirement and Unemployment Insurance, and any other benefits he would have earned during the time held out of service.

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.

E. T. Terry, a carman in carrier's trainyard in Eugene, Oregon, was suspended from service for 30 days because of a violation of carrier's General Rules and Regulations, Rules 801, 802, M, O, and 4032. These alleged rule violations resulted from an exchange of words between the claimant and carrier's special agent, J. E. Woolwine.

The record reveals that while the special agent was driving a vehicle on a dirt road beside Track 30, he raised a cloud of dust. The claimant and others working in the vicinity were apparently annoyed by the dust. Claimant confronted the special agent and spoke to him about driving fast in an area where there was limited clearance between tracks and about the fact that men were working there. An exchange of words took place. There was an investigation of the incident and the claimant was suspended for 30 days as a result.

This Board need not repeat the testimony of each witness to justify its position. It is sufficient to state that on the record, claimant was guilty of numerous rule violations, specifically Rules 801 and 802. The carrier, however, has not carried its burden or proving that claimant violated Rules M, O, and 4032.

While this Board has, on many occasions, outlined its role in relation to discipline administered by a carrier and noted that it does not presume to substitute its judgment in discipline cases for that of the carrier where charges are proven, it has justifiably reduced a penalty if it was considered to be excessive in view of the facts and circumstances of the case before it.

In this instance, this Board concludes that carrier could have achieved its end by a 10-day suspension. This would have been sufficient to instruct the claimant, a 28 year employee who should have known better, that his behavior in this instance was improper and should not be repeated.

A W A R D

The claimant's suspension shall be reduced from 30 to 10 days.

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 16th day of April, 1980.