

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Firemen & Oilers)
{
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer F. N. Wilkerson was unjustly assessed a fifteen (15) day actual suspension on July 25, 1977. As a result of a previous investigation which was held on the same day at which time Laborer Wilkerson was assessed a fifteen (15) day deferred suspension, Laborer Wilkerson's actual suspension from all service of the railroad amounted to thirty days.
2. That Laborer F. N. Wilkerson was unjustly and unreasonably held out of service pending investigation.
3. That accordingly the Carrier be ordered to reimburse this employe and make him whole for all lost wages involved in this suspension including vacation rights, Railroad Retirement benefits, sickness benefits, and any other benefits he would have earned which were lost as a result of F. N. Wilkerson's 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.

In an earlier case related to the instant matter, Carrier charged that on July 21, 1977, F. N. Wilkerson, the Claimant here, failed to adequately perform his assigned tasks in the washing area, resulting in a three (3) hour work delay on the property. On July 29, a hearing on this charge was held and Claimant was found culpable. A fifteen (15) day deferred suspension disciplinary penalty was assessed. This case was on appeal in Award No. 8130 the Board there denying Claimant's request for dismissal of the fifteen (15) day deferred suspension.

Simultaneously with being charged as described above, Claimant was notified of a second hearing to be held on the same day as the hearing discussed above,

to investigate a second charge that Claimant had not performed an assigned chore on July 22, 1977, before reporting off sick for the remainder of his shift, resulting in compensation to Claimant for work not done.

As a result of this second hearing on July 29, 1977, Claimant was adjudged by Carrier to have been guilty with respect to the second charge. Since Claimant, as of the moment of the imposition of the first fifteen (15) day deferred suspension, was considered by Carrier to be on probation, Carrier activated the deferred suspension upon the subsequent finding of Claimant's guilt in the second incident. The result: a total of thirty (30) days of actual suspension for the two transgressions.

The purposes of a deferred suspension are, of course, 1), provision of opportunity for remediation and, 2), deterrence. Obviously, with the deferred suspension coming the same day as its "triggering" subsequent discipline, there was no opportunity for the deferred suspension to work its intended salutary affect. This observation, coupled with our judgment that Claimant's transgression in the instant case was hardly more, under all of the circumstances (sudden demotion from a job on which he had not performed adequately, etc.), than de minimis, leads to the conclusion that a single fifteen (15) day suspension period is adequate, sufficient, and just discipline for Claimant's culpable behavior in both cases.

Thus, while we find that substantial evidence does exist on the record for a finding in this case of Claimant malfeasance, as charged by Carrier, we hereby order that the total disciplinary lay-off to be suffered by Claimant for both the transgression in this instance and the culpability found in Award No. 8130 be limited to a single fifteen (15) day actual suspension period, with Claimant to be recompensed accordingly.

A W A R D

Sustained in part and denied in part as per the findings.

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 11th day of June, 1980.