

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Upgraded Carman Apprentice, R. A. Denton, was unjustly suspended from the service of the Illinois Central Gulf Railroad on February 18, 1978.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to reinstate Upgraded Carman, R. A. Denton, with seniority unimpaired, be paid for all time lost, and any and all other benefits he would be entitled to as a condition of employment, plus six percent (6%) interest on wages.

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, Robert A. Denton, an Upgraded Carman Apprentice employed at Carrier's Johnston Car Shop located in Memphis, Tennessee, was issued a notice of investigation first on date of February 16, 1978 and then again on February 18, 1978, charging him with the following offenses:

- "1. Leaving your assigned duties and out of the shop area without permission Wednesday, February 15, 1978, at approximately 2:30 p.m.
2. With taking company property and transporting it on a company tractor to your car in the parking lot.
3. With threatening Car Foreman A. S. Marshall and being belligerent with both Car Foreman A. S. Marshall and W. H. Jones."

On date of February 15, 1978, at approximately 2:30 PM, Claimant's immediate supervisor, Car Foreman A. S. Marshall, approached Production Foreman, W. H. Jones, informing him that Claimant was away from his assigned job without permission and that Claimant had just been observed going to the parking lot on a repack tractor.

Marshall requested that Jones accompany him to the parking lot to ascertain the reason for Claimant going there. As they approached the parking lot, they observed the Claimant driving toward them on the tractor at which point, Marshall stopped him and asked what he was doing in the parking lot. Claimant replied he had remembered he left his automobile headlights on at lunch time so he returned to the lot to turn them off and also to put in his car a jug of anti-freeze which he said he had obtained from Carman M. Hardy. Marshall instructed the Claimant to return to work and when Claimant departed, Marshall and Jones proceeded to Claimant's car where in looking through the car window they both observed a one gallon yellow plastic jug behind the front seat. Shortly following their return from the parking lot, Claimant approached both Marshall and Jones allegedly in a belligerent manner, shouting accusations at them that they had invaded his privacy by looking into his automobile. During this verbal barrage, according to Marshall, Claimant, employing vulgar and profane language, threatened to kill him if he ever caught him (Marshall) around his car again. Foreman Jones meantime, in an attempt to calm the Claimant suggested to him that if he had a complaint he should voice it with the General Car Foreman, Harold Smith.

Claimant heeded Jones' advice and upon listening to what Claimant had to say, Smith summoned Marshall and Jones and together all of them proceeded to Claimant's automobile in the parking lot to retrieve the one gallon yellow plastic jug. By the time they arrived, the yellow container was no where to be found, but the supervisors did come upon a container of anti-freeze which was blue in color, in Claimant's car trunk. At this point, Carman Hardy was summoned to the lot where he informed the supervisors that he did not recognize the blue container of anti-freeze but did relate he had earlier in the afternoon, upon Claimant's request, filled a yellow container belonging to Claimant with Company oil. As it was now nearing the end of Claimant's tour of duty, he was allowed to clock out and go home.

On the following day, Thursday, February 16, 1978 (a rest day for Claimant), supervision, in ruminating and reflecting on Claimant's actions the previous day, determined a formal investigation of the matter was in order and that Claimant's behavior warranted holding him out of service prior to commencement of the formal hearing. A notice of formal investigation was mailed to Claimant on date of February 16, 1978, and a corrected notice of said investigation was handed to him upon his first day back to work following the incident at bar on Saturday, February 18, 1978; on which date he was withheld from service. Based on the findings obtained at the hearing, Claimant was adjudged guilty as charged and given a ninety (90) day disciplinary suspension.

Upon a review of all the evidence of record, the Board makes the following determinations:

1. Notwithstanding the numerous objections raised by the Organization at the investigative hearing, this Board finds that the Claimant received a fair and impartial hearing and was afforded his full due process rights;
2. That under the prevailing circumstances, the Board determines the Carrier was within its contractual rights when it suspended the Claimant from service prior to commencement of the formal hearing and therefore,

Carrier did not violate, as the Organization so alleged, Rule 39 of the Controlling Agreement bearing effective date of April 1, 1935;

3. The Claimant was, in fact, given proper notice of the investigation.

In our close scrutiny of the record before us, this Board cannot find any extenuating or mitigating circumstances which would cause us to disturb in any manner or degree, the quantum of discipline imposed on the Claimant. If anything, we deem the discipline assessed for the admitted offenses by the Claimant of leaving his assigned work area without permission and appropriating Company property (one gallon of oil), for his own personal use, as far too lenient. The preponderance of evidence also suggests Claimant is guilty as charged with respect to insubordinate acts directed at his immediate and other supervisors. Based on the foregoing determinations and the finding that Carrier's action against the Claimant was neither arbitrary, capricious, discriminatory or excessive, we rule the instant claim be denied.

A W A R D

Claim denied.

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 21st day of January, 1981.