

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated The Railway Labor Act and Rule 32 and 33 of the controlling Agreement when they unjustly, arbitrarily and capriciously dismissed Local Chairman H. D. Stewart of San Antonio, Texas, following investigation held February 7, 1979.
2. That the Missouri Pacific Railroad Company be ordered to compensate Local Chairman Stewart as follows:
 - (a) That he be restored to service with seniority and vacation rights unimpaired.
 - (b) That he be compensated for all wages lost starting February 1, 1979 and continuing until he is restored to service.
 - (c) Made whole for loss of overtime from February 1, 1979, until returned to service.
 - (d) Made whole for any loss of insurance for both himself and dependents.
 - (e) In addition to the above claimed herein, the Carrier shall pay an additional amount of 6% per annum compounded annually on the anniversary date of claim.

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.

Claimant was employed as a Carman at the Carrier's "SoSan Yard" at San Antonio, Texas at the time of events germane to this dispute, which occurred on February 1, 1979. He was also a duly authorized representative of the Organization for presentation of grievances and complaints concerning the execution of the terms of the Agreement. On that date, a dispute arose over the operation of a "road truck" used to clear derailments. According to the Organization, a long standing agreement or understanding existed which rotated the right to operate the road truck among carmen qualified and licensed to do so. Per the Organization, the General Car Foreman had unilaterally abandoned use of such agreement. A day or so prior to February 1 a derailment had occurred which, while not impeding the right-of-way, would require rerailment as soon as practical. At commencement of the day shift, the General Car Foreman had directed another Carman (Trevino) to operate the truck; Trevino had purportedly declined because he had just completed his rightful turn on the truck for the month of January; the General Car Foreman dismissed or suspended him pending an investigation.

At Trevino's request, the Claimant herein had attempted to intercede on his behalf as his representative, to no avail. As the Claimant left that location, another Carman requested his intervention with the same supervisor on a non-related safety matter. The Claimant returned to the General Car Foreman in this regard, but instead of being permitted to pursue the matter, was drawn instead into the continuing "road truck" matter. According to the record, the General Car Foreman ordered the Claimant to "find him a driver" for the truck. The Claimant's response to such order resulted in his dismissal or suspension pending investigation, after which he was terminated on the charge of being "insubordinate, quarrelsome or otherwise vicious." According to the Carrier the Claimant refused to comply claiming it was not his responsibility and reminding the officer that he was a "damn supervisor" and to do it himself. The Carrier contends the Claimant was calmly asked twice and after the second refusal was taken out of service. The Organization contends that the Carrier placed the Claimant in an untenable position of requiring him to act in a supervisory capacity of assignment work while he was functioning as a representative for such affected employees. The Claimant denies he used profanity, or that he was insubordinate or vicious in the exchange with the General Car Foreman as he was charged. The Organization also contends the hearing officer conducted a prejudicial hearing by limiting the questions raised by the Organization and that the decision was predetermined before the hearing.

It should be noted that the Claimant was returned to duty as of May 8, 1979, without compensation. The Organization pressed its claim that he be made whole for all time out of service -- the subject of this dispute.

We have carefully reviewed the substance of this case and conclude that the Claimant's responsibility for error, if any, was minimal. His becoming embroiled in a dispute with the General Car Foreman cannot be separated from the long standing agreement between the parties to rotate the right to operate the road truck among qualified Carmen -- which the supervisor apparently did alter -- and his earlier dismissal or suspension of Carman Trevino. Per the General Car Foreman, he did not have a list of the Carmen qualified to operate the truck so as to permit next selection, and it would appear that such list was routinely provided by the Organization -- namely, the Claimant. But the record indicates that it was not the list the supervisor was seeking, but rather "a driver". If, as the record can

be interpreted, a dispute was already prevalent on this matter, i.e. the suspension of Trevino, his order to the Claimant to "get me a driver" was at the minimum ill-timed. And considering the Claimant's obligation to represent the interest of those employees involved in this matter, i.e. the potential operators of the road truck, the well-reasoned adage of "obey and grieve" cannot be claimed to apply here. It is apparent that the Claimant would have carried out such a request absent the situation that prevailed but, considering the circumstances, he was clearly placed in an untenable situation. We are mindful that the Organization could have filed a grievance if it felt the longstanding practice of rotation was being violated -- and it is this aspect of its actions that is most worthy of admonishment. The record would indicate that Claimant's demeanor in the final conversation with the General Car Foreman, while obviously non-cooperative, and probably agitated, could not be construed as "vicious".

In sum, while the Claimant may have been perceived as deserving discipline for his actions, a full airing of the matter at a hearing should have made manifest that other factors and attitudes contributed to the problem. We find the charges not fully supported by the record and reduce the discipline accordingly.

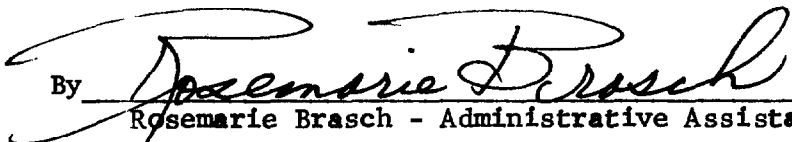
A W A R D

The Claimant shall be assessed a ten-day suspension for exhibiting a non-cooperative attitude in dealing with a supervisor on February 1, 1979; otherwise, he shall be made whole for all wages lost during the period he was held out of service at his regular rate at that time.

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 28th day of October, 1981.

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