

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers  
{ Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That in violation of the current agreement, Gang Leader Roosevelt Dates, Jr. was unjustly suspended from the service of the Carrier, for forty five days, effective September 21, 1978, following a hearing held on October 12, 1978.
2. That accordingly, the Carrier be ordered to:

Compensate the aforesaid employee for his time lost (September 21, 1978, to November 5, 1978,) at the pro-rata rate of the position he held at the time he was suspended.

In addition to money claim herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this 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 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.

Mr. R. Dates (hereinafter referred to as the Claimant) entered Carrier's service on November 21, 1950 as a laborer. On June 6, 1973, he was dismissed from service and subsequently reinstated on August 2, 1973.

On September 21, 1979, Claimant was assigned as laborer-Gang leader. At approximately 2:15 PM, Carrier's General Foreman instructed the Claimant to replace a used fire extinguisher. Claimant refused, stating it was not his job.

As a result of this occurrence, Claimant was notified to appear for formal hearing by letter dated September 22, 1978.

On the basis of the evidence adduced at the hearing evaluated on October 12, 1978 Claimant was suspended from service for a period of 45 days.

The formal hearing record clearly and conclusively established Claimant's responsibility for refusing to follow the reasonable instructions given him on September 21, 1978. He not only refused to change the fire extinguisher as instructed by Carrier's Officer but also refused to accompany him to a telephone so that the Claimant's immediate supervisor could be consulted and the matter clarified.

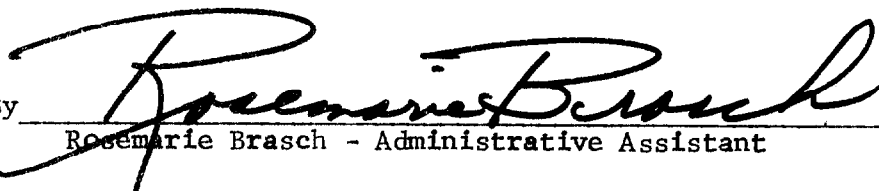
The Organization contends that a misunderstanding had emerged as to whose job the filling of the extinguisher belonged to. This is not the case. Claimant flatly refused to service it when asked by his supervisor, refused to go with the supervisor when told, started to drive away instead and refused to stop when ordered. Carrier had basis to invoke discipline. However, punishment should fit the crime. We find forty-five (45) days' suspension excessive and order that it be reduced to thirty (30) days.

A W A R D

Claim sustained in part.

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 27th day of January, 1982.