

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. (a) That Carman G. B. Reed was improperly given a thirty (30) day actual suspension from service of Carrier from April 28, 1979, through May 28, 1979, inclusive in violation of Rule 34 of the Current Agreement by way of letter dated April 26, 1979, and
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Reed for all time lost as a result of said improper suspension, or one hundred and sixty-eight (168) hours at the straight time rate of pay.
- (c) Carrier should also be instructed to clear Carman Reed's personal file of all implications and allegations as charged.
2. (a) That the Carrier is improperly giving actual days suspension as discipline which is not in line with the provisions of Rule 34 Discipline, of the Current Agreement, and
- (b) According, Carrier should be instructed to suspend such actions until such time as the matter of giving actual days off has been contractually agreed to.

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, Mr. G. B. Reed, is a Carman working for the Louisville and Nashville Railroad Company. On February 20, 1979 Claimant was advised by letter from Mr. W. L. Gordon, General Foreman at Carrier's Decoursey Shops near Covington, Kentucky that he was charged with dereliction of duties by being absent from his job without permission from his supervisor on the second shift, February 15, 1979. After a formal investigation was held on this issue on March 28, 1979 in

the office of the Assistant Master Mechanic, the Claimant was notified on April 26, 1979 by the Carrier that he was being assessed thirty (30) actual calendar days off without pay.

This case centers on both the whereabouts, as well as the manner in which Claimant was utilizing his time, from approximately 7:30 P.M. on February 15, 1979 to approximately 9-9:30 P.M. on that same day. According to testimony at the hearing Claimant and a co-worker, Mr. J. B. Hood, were diverted from their regular assignments under the supervision of Mr. H. Bentley to perform some work for Second Shift Rip Track Foreman, Mr. C. L. Smith. This work, assigned to Claimant and his co-worker about 5:20 P.M. entailed repairs on the rip track where an accident had occurred earlier that evening. This work was finished by Messrs. Hood and the Claimant at approximately 7:30 P.M. Mr. Hood reported back, thereafter, to Mr. Bentley, his regular foreman for Heavy Repairs assignments, whereas Mr. Reed, the Claimant, did not until approximately 9-9:30 P.M.

A close reading of the hearing minutes can only permit one to conclude that only Claimant himself knew for sure where he was and what he was doing during this job assignment hiatus of approximately two hours. At the very least it is clear that he was not under assignment from either Mr. Bentley, his regular foreman, nor Mr. C. L. Smith, his temporary foreman, after approximately 7:30 P.M. until about 9-9:30 P.M. on the date in question. This is corroborated by testimony.

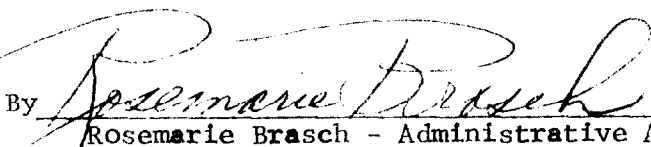
The function of the Board, in this and other discipline cases is to ascertain, in its appellate role, if substantial evidence is present as basis for disciplinary measures taken by Carrier. In this case, the test of substantial evidence has been met and the Board will not overturn the discipline imposed by the Carrier. The Board also notes that insubordination can occur without a stated refusal to comply on the part of an employee, as the Board has held in prior cases (See Second Division Awards Nos. 7128 and 7193). In this case the Claimant did not refuse to comply with orders because neither foreman was able to give him orders because of his unknown whereabouts during the time in question.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of March, 1982.