

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (AMTRAK) was arbitrary and unjust in the assessing 15 days of suspension to Electrician Halneuhauser Robinson effective November 14, 1979.
2. That accordingly the National Railroad Passenger Corporation (AMTRAK) be ordered to compensate Electrician Halneuhauser Robinson all wages lost during the time out of service on account of his 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.

Claimant, Mr. H. Robinson, is employed by the National Railroad Passenger Corporation (AMTRAK) as an electrician at the repair facility commonly referred to as the 12th Street Coach Yards, Chicago, Illinois. Claimant's service credits with Carrier go to September, 1975 by reason of his employment with the former Penn Central Railroad as well as with AMTRAK.

On October 12, 1979 Claimant was advised to appear for formal investigation (which was ultimately held on October 30, 1979) to determine the disposition of the Carrier charge against him stemming from an incident allegedly occurring on October 11, 1979 in which Carrier averred that Claimant violated AMTRAK Rules of Conduct "I" and "J" when Claimant allegedly used boisterous and profane language while allegedly threatening foreman C. Vandenburg (*) with physical harm. On November 12, 1979 Claimant received AMTRAK Form NRPC-1189 advising

(*) Foreman's name is spelled variously in hearing transcript also as C. Vandemburgh and C. Vanden Bergh.

him that he had been found guilty as charged and was assessed a 15 working day suspension (to run from November 14, 1979 to December 4, 1979 inclusive). After appealing this decision of the Carrier through the final level on property, instant case is now before the Second Division of the National Railroad Adjustment Board.

In the first instance, Claimant argues that the case should be sustained on procedural grounds since Carrier violated Rule 23 (b) of the Agreement between the parties. Rule 23 (b) specifies, among other things, the number of postponements of investigation date available to Carrier. The Board notes, however, that both parties to this case had requested postponements of the original date of the hearing which was set for October 16, 1979; that the postponement requested by Carrier which is objected to by Claimant could be reasonably construed as the result of the earlier postponement by Claimant (since this required a rescheduling of the appearance of witnesses); and that the technicality of Rule 23(b) objected to by Claimant as this relates to the number of postponements is of lesser consequence than the qualification found in that same Rule which states that a formal investigation of charge against Claimant should take place within 20 days of the date of said charge in the event of postponement(s). This time-frame was honored. Although the Board recognizes that procedural infractions against collective bargaining Agreements between parties and against the "usual manner" of handling cases of this nature, on appeal, as so stipulated by the Railway Labor Act, can be of such a grievous nature as to supercede any further consideration of the merits of a case, the Board also holds that this did not happen in this instance. The spirit of the collective bargaining Agreement between the parties was followed in a reasonable manner. And in this respect the Board cites the opinion of the Court of Appeals, Fourth District (No. 6723: -- (210 F. (2d) 812) to the effect that:

"(t)he purpose of ... (any procedural provision of an Agreement) ... is to expedite the proceedings for which the rule provides, not to serve as a limitation upon their being held; and the remedy for violation of that provision is damages for any delay that may have occurred, not reinstatement with an unassailable record or damages for an indeterminate period on the theory that the proceedings otherwise regularly held were a nullity. Collective bargaining agreements like other contracts are to be given a reasonable construction, not one which results in injustice and absurdity."

On merits, Claimant holds that the claim should be sustained because (1) Carrier's investigation reached beyond the original charge, and because (2) he is innocent of the actual charges against him which consist in (a) threatening his foreman with (b) boisterous and profane language. As to (1) cited above, the notice of formal investigation by Carrier to Claimant on October 12, 1979 clearly indicates by the language of the charge that it means to apply only those sections of Rules of Conduct "I" and "J" which address threatening behavior accompanied by boisterous and profane language, and not a whole phantasmagoria of other issues under these same Rules which hearing officer, nevertheless, introduced into the hearing. The Board is not able to sustain the claim, on merits, on these grounds alone although it does recognize that

the content of the hearing went beyond the narrow limits of the original charge and that the hearing officer, by permitting this to happen, rendered a disservice to Claimant. As to (2) (a) and (b) cited above, an analysis of the voluminous hearing record of this case before the Board indicates that Carrier did not meet the test of substantial evidence as this relates to Claimant's actually threatening foreman Vandenburg, although it is clear that there was an exchange of words between Claimant and Mr. Vandenburg during which Claimant used language which could be construed as being profane. Evidentiary inconsistencies which stem in part from Carrier witnesses themselves confirm the Board's conclusion on the former point i.e. (2) (a), whereas admissions by all parties, including the Claimant, support the Board's conclusions on the latter i.e. (2) (b).

The position of the Board is that the sole charge against the Claimant which has met the test of substantial evidence is that he used profane language while having a non-threatening exchange of words with his foreman which could, nevertheless, be considered disrespectful of legitimate, managerial authority. As to the charge that Claimant used "boisterous" language, the Board has extreme difficulty operationalizing this term in its application as the parties themselves did in this case and is, therefore, able to arrive at no decision in this matter. Thus the decision of the Board is that Rule 23(f) of the Agreement between the parties be applied to the following extent: that Claimant be made whole for ten (10) of the fifteen (15) working days suspension with reimbursement for all wages lost for those ten (10) days.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1982.