

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute:

(Brotherhood Railway Carmen of the United States
and Canada

(Western Fruit Express Company

Dispute: Claim of Employees:

- (a) That under the controlling agreement, the Carrier improperly held Carman, L. W. Isaak, out of service from January 23, 1978, through January 27, 1978.
- (b) That accordingly, the Carrier be ordered to compensate Carman L. W. Isaak for all lost wages during the aforesaid time, plus any and all other benefits due under the current agreement.

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.

The instant claim is almost identical both in fact and argumentation to that which was presented in Award 9053. The only apparent differences between the two cases which can be discerned from the record is the degree and type of "mutilation" which Claimant performed upon his hard hat; and also the addition of Organization's argument that "... the supposed mutilation of the hard hat was not an uncommon practice at this facility" and "... that the Carrier allowed other employes to make changes to their hard hats similar to the decorating the Claimant done (sic)"; and Carrier's further contention "... that the plastic construction of the hard hat would have a chemical reaction upon being painted".

Needless to say, these additional arguments and factual differences either have not been substantiated or are of insufficient weight to warrant a departure from the decision which was made by the Board in Award 9053. Thus it is concluded that though Claimant Isaak is found to have willfully mutilated his Carrier-provided hard hat and though Carrier had the right to administer appropriate disciplinary action thereto, under the circumstances, Carrier's five day disciplinary suspension of Claimant without pay is deemed to have been "unreasonable and excessive", and, therefore, improper.

A W A R D

The claim shall be sustained in part and denied in part and Claimant's five day suspension without pay shall be modified instead to a three day suspension without pay.

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 28th day of April, 1982.