

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 88-6
Docket No. 9100
2-CMStP&P-CM-'82

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman M. J. Pidcock for all lost wages from August 10, 1979 to September 8, 1979 which he lost as result of suspension of 30 days subsequent to a hearing held on July 5, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Carman M. J. Pidcock whole for all benefits that are a condition of employment such as, but not limited to, holidays and vacation qualifying time which he lost during his unjust suspension.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to award Carman M. J. Pidcock interest at the 6% rate per annum for any payment he may receive as result 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.

Claimant, Mr. Pidcock, was notified by letter to appear for an investigation on June 25, 1979. The charges read:

1. Your alleged failure to properly complete your regularly assigned hours of duty on May 26, 1979, violation of Rule No. 1, Hours of Service.
2. Your alleged failure of being absent without proper authorization at approximately 2:55 P.M., on May 26, 1979.
3. Your alleged failure on May 26, 1979, to close the door on Car 50U28248, revenue car, loaded with furniture; and see that it was properly secured.

4. Your alleged falsification of Payroll Form PR-2 REV 4-74 on May 26, 1979, wherein you claim total hours worked as eight (8) hours.

The investigation was postponed at the request of the Organization and eventually held on July 5, 1979. Following the hearing the penalty herein complained of was assessed.

The Organization seeks to taint the record by claiming that the hearing was not fair and impartial as required by the contract. It points out that a witness who could have testified on charge number three was not present. Its objection was noted in the record but the witness was not called. For reasons which will be outlined in this discussion, we find that the absence of such testimony did not jeopardize claimant's rights. The hearing was conducted in accordance with contractual requirements and past practice.

There is little controversy in the record with respect to the events which transpired on the day in question. Mr. Pidcock was working in the yard on a 7:30 A.M. to 4:00 P.M. shift. At some point during the day his duties required him to close the door on a railroad car. He was unable to close the door by himself. At this time he believed that other duties required higher priority attention than the door. Accordingly, he placed a Bad Order tag on the door noting problems with the door hasp. Apparently he intended to return and correct the problem. He failed to do so before leaving the property. It was later closed by another carman with the assistance of a carrier official. It should be noted that the Organization's objection, previously outlined, to the absence of a witness referred to the claimant who attempted to close the door. It believed that his testimony would prove that claimant could not close the door alone. Since the closing required the assistance of another party it is obvious that claimant had encountered severe difficulty. Additional testimony was not required. Mr. Pidcock completed the rest of his duties and sometime around 2:50 P.M. he asked permission of his immediate superior, who was responsible for the employees working in the yard, if he could go home early. The response indicated that if his work was accomplished he could leave early. Whereupon, claimant filled out his time card for the full eight-hour day and departed the property at approximately 2:55 P.M.

Mr. Pidcock straightforwardly admits to the foregoing. His testimony is corroborated by the carrier official who also testified that although he was not asked about the eight-hour time card, he would have approved such time under the circumstances. He further testified that in view of claimant's past cooperation he had no problem with "giving him a break". The carrier attempts to rebut the foregoing by pointing out that Mr. Pidcock is a member of the mechanical department and should have obtained permission from a supervisor in that department prior to leaving. The record indicates, however, that there were no mechanical supervisors on duty that day though they were on call. Rule 803A places responsibility for direct supervision over employees working in the yard on the individual who gave permission to leave. The Yardmaster and claimant both believed this and acted accordingly. It is clear that there was no intent on the part of claimant to defraud the company. In fact, he believed with some reason that he followed proper procedures. Accordingly, we find that the carrier failed in its burden of proof with respect to charges two and four. By his own admission, Mr. Pidcock did not complete his work as he did not return

to close the car door. In effect, claimant did not complete the conditions related to permission to leave early and, accordingly, he does not approach the claim with clean hands. Some form of corrective action was merited. The carrier assessed the penalty based on the finding that claimant was guilty with respect to four charges.

Based on the foregoing and the entire record we find Mr. Pidcock bears some responsibility for only two of the charges. Accordingly, it seems appropriate to diminish the penalty. Items 2 and 3 are denied as being without contractual support.

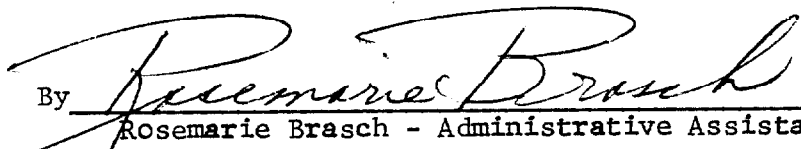
A W A R D

The thirty (30) day actual suspension will be modified to a fifteen (15) day actual suspension and claimant will be made whole with respect to fifteen (15) days.

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.