

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company violated the controlling agreement, particularly Rules 15 and 24, when they arbitrarily assessed Car Inspector J. W. Vance forty-five (45) days actual suspension commencing 12:01 AM, March 17, 1980 until 12:01 AM, Thursday, May 1, 1980, following investigation held on March 11, 1980.
2. That accordingly, the Texas and Pacific Railway Company be ordered to compensate Car Inspector Vance in the amount of eight hours (8') per day, five (5) days per week beginning March 17, 1980, until returned to service at the end of the forty-five (45) day suspension, and that he be compensated for all benefits the same as any other employee in active service during the time of his suspension and that his personal record be cleared of the charges.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was formally charged with failure to comply with verbal instructions from his general car foreman and for failure to protect his job assignment. Rule 15 of the Agreement (Absent without Leave) clearly states that:

"An employee desiring to remain away from service must obtain permission from his foreman to do so; but if sickness or other unavoidable causes prevent him from reporting to his regular post of duty, he shall notify the foreman promptly."

The record clearly indicates that the Claimant called his foreman at 2:00 P.M., approximately 1½ hours prior to the start of his shift. Claimant was calling to advise that he was unable to come to work on account of his car breaking down. The foreman instructed Claimant to take a taxi.

This Board has consistently taken the position that it will not interfere with the Carrier's discretion in matters of discipline, absent a clear showing of arbitrary, capricious or unreasonable action, Referee Shapiro in Second Division Award No. 6485 stated that:

"Excessive penalty is inconsistent with the purpose of punishment which essentially is to accomplish correction, not retribution. (This Board) ... has reserved the right to rectify the assessment of a penalty obviously excessive."

Claimant was assessed a 45 day suspension, which this Board finds excessive given our findings that Claimant did call his foreman. We do, however, bow to the Carrier's assessment that discipline was warranted, and instruct the Carrier to reduce the 45 day suspension to 30 days. Claimant shall be compensated for the 15 days of excessive discipline at the same rate of pay when the discipline was levied.

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 28th day of April, 1982.