

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
(Washington Terminal Company

Dispute: Claim of Employee:

The Washington Terminal Company violated that part of the contract provisions which recognizes the Employees' right to Union representation without Employer retaliation, as did the Washington Terminal Company violate also rule 29 of the controlling agreement when it suspended Mr. Pearson ten (10) days which resulted from the retaliatory charge of insubordination brought against him after he sought help and advice from his Union Representative.

The Washington Terminal Company should be ordered to honor the Employees' right to Union Representation without retaliation from the Employer.

The Washington Terminal Company should be ordered to make Mr. Pearson whole in line with rule 29. He should be compensated for his net wage loss and for any other loss he may have been caused to suffer due to the W. T. Co.'s miscarriage of justice. This charge should be expunged from Mr. Pearson's record.

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 was charged with violation of Carrier's General Rule "N" which reads in pertinent parts:

"... being insubordinate ... while on duty or while on company property..."

A formal investigation was held, Claimant was found guilty and assessed a ten day suspension. The record indicates that the Claimant, while ill, had worked six hours of his shift in the rain. He was subsequently asked to perform another job which he felt should not have been assigned to him. After disputing the

assignment, Claimant informed the Carrier's representative that he was ill and was leaving work.

It is well established that this Board will not overturn a Hearing Officer's decision absent a clear showing of arbitrary, capricious, or unreasonable actions. However, in the instant case, it appears that the discipline assessed the Complainant was excessive. This Board has ruled in Award No. 8033 that:

"... we are also mindful of the need to ensure that the punishment fits the transgression."

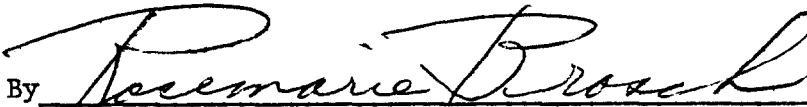
This Board also finds that the penalty assessed under the particular circumstances of this instance was somewhat excessive. While being ever mindful that the Board will not disturb Carrier imposed disciplinary measures where the hearing comports with long standing norms of fair play, the ten day suspension reached in this case was excessive. According, we feel that the ten day suspension should be reduced to five days, and that the Claimant be made whole for the five days excessive discipline at the rate of pay in effect at the time of the discipline.

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.