

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when Electrician Helper Bruce Hodges was unjustly suspended from service on September 25, 1978 (11:00 PM to 7:00 AM shift), and subsequently was unjustly dismissed from service on October 16, 1978, for alleged insubordination and falsification of his time card on September 25, 1978, the 11:00 PM to 7:00 AM shift.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician Helper Bruce Hodges whole by reinstating him to service with all seniority and other rights unimpaired and repaying all lost wages and benefits and his record cleared.

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.

On September 27, 1978, the Claimant was advised of a formal hearing concerning an alleged insubordination and a failure to follow instructions, as well as an alleged falsification of a time card.

Subsequent to the investigation, the Claimant was terminated from service.

At the investigation, the Carrier presented evidence to demonstrate that the Employee was late in reporting for work and he turned in a time card showing that he had reported on time; and further, that he was given certain instructions to perform work and when he asked if the "pits had been cleaned", he was instructed that he should clean them if it was necessary in order to perform the work, yet the work was never performed.

Concerning the asserted falsification of a time card, the Claimant testified that he was merely following a "normal procedure". Concerning the asserted failure to perform the work in question, the Claimant denies that he received

certain information, as stated by Carrier officials, but he does agree that he was told to perform certain work on the engines in question. He contends that the pits were quite unsafe for standing in, or to "do anything in", and that his failure to comply was the result of unsafe conditions.

Our review of the entire record demonstrates to us that there were valid orders given to the Employee and he failed to comply with them, and we find no basis for disturbing the finding concerning the time card. However, one asserted procedural deficiency does bear some scrutiny. At the hearing, the Employee attempted to ask certain questions, but the Hearing Officer stated, "I cannot allow you to ask questions." Nonetheless, the Hearing Officer permitted the representative to start asking questions, however when the representative sought to inquire as to other incidents, the Hearing Officer refused to permit the line of inquiry and limited questions solely to the night of September 25. The Claimant explained that he had been injured twice in the past in the pits, and he attempted to show certain evidence in that regard.

We are of the view that the Hearing Officer erred in not permitting the line of inquiry. Certainly, we review many transcripts which contain questions and answers that are highly immaterial to the matter under review, and we can understand the reluctance of a Hearing Officer to permit an undue expansion of the record. However, we cannot accept the concept that in all cases, and under all circumstances, a hearing must be confined solely to the day in question, especially when there is present some question of motive or intention which is quite frequently the case in an asserted "insubordination". Thus, we feel that certainly as a matter of possible "mitigation", if nothing else, it should have been permitted by the Hearing Officer for the Employee to explain and corroborate prior experiences which may have had a bearing on his thinking process on the day in question.

Thus, because the Hearing Officer may very well have limited possible "mitigation", we will restore the Claimant to service, but without back pay.

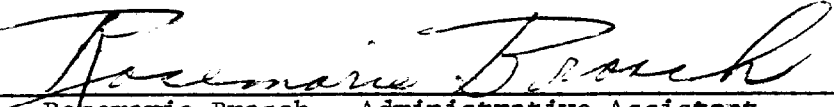
A W A R D

1. The termination is set aside.
2. The Claimant shall be restored to active service with retention of seniority and other rights, but without reimbursement for any compensation lost during the period of the suspension.

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 19th day of May, 1982.

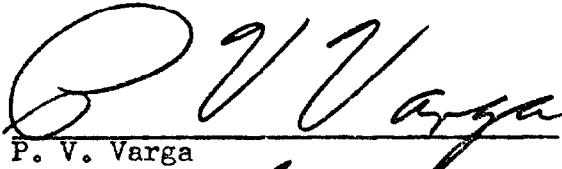
CARRIER MEMBERS' DISSENT
TO
AWARD 9079, DOCKET 8700
(Referee J. A. Sickles)

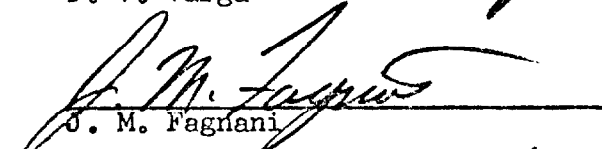
Discipline hearings are held to produce evidence concerning specific infractions and specific failings on specific dates. The Organizations meticulously object when the Carrier varies in any degree from the specificity of the charge that is made or the propriety of material not having specific bearing to the time and date of the charge.

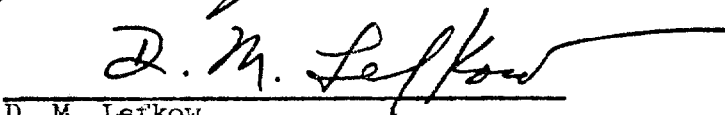
Yet, in this case, for no other apparent reason than "possible mitigation", the Majority has concluded that there "may" have been some impropriety. Such assumption and speculation is improperly exercised by this Board when it is very evident that the infraction for which claimant was charged was substantiated in the record.

Absent evidence of impropriety, not speculation, this Board exercises power that it does not possess.


We dissent.


P. V. Varga


J. M. Fagnani


D. M. Lefkowitz


J. E. Mason


J. R. O'Connell