

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago and North Western Transportation Company

Dispute: Claim of Employee:

1. Coach Cleaner Frank B. Holley was erroneously charged with failure to protect his assignment on September 11, 1979, during the hours of 10:00 P.M. to 11:00 P.M.
2. Coach Cleaner Frank B. Holley was unjustly assessed 30 days actual suspension plus 60 days which had been previously deferred, on October 16, 1979, following investigation held October 9, 1979.
3. That the Chicago and North Western Transportation Company be ordered to comply with Rule 35(h), and compensate Coach Cleaner Frank B. Holley for all time lost, plus all benefits which are a condition of employment.

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, a coach carpenter, was charged with failure to protect his assignment between 10:00 p.m. and 11:00 p.m. on September 11, 1979. The investigation was originally scheduled for September 24, 1979 but the Carrier unilaterally postponed the hearing until October 9, 1979. On October 16, 1979, the Carrier suspended Claimant for thirty days and thereafter Claimant also served a previously deferred sixty day suspension.

At the investigation, the Assistant Car Foreman testified that Claimant was not at his assigned work location. The Foreman then conducted a short search but was unable to find Claimant. Later, when the Foreman informed Claimant that Claimant would be docked one hour of pay for deserting his work area, Claimant refused to explain his absence. Claimant denies that he was away from his assigned work area at any time during his shift on September 11, 1979.

The Organization urges us to summarily sustain this claim on the grounds that the Carrier violated Rule 35(j) by postponing the September 24, 1979 investigation without first procuring the Organization's consent or offering a sufficient reason to justify a delay. We are precluded from ruling on the validity of the Organization's contention since the Organization did not object to the postponement at the investigation. The Carrier gave written notice of the postponement on September 19, 1979 which gave the Organization ample time to object both before and during the investigation.

This Board has often ruled that issues of credibility are best resolved by the officer who hears the testimony in person and is able to observe the demeanor of witnesses. In this case, the Carrier could reasonably place greater weight on the Assistant Car Foreman's testimony than on Claimant's self-serving, blanket denials. Thus, the record supports a finding that Claimant was impermissibly away from his assigned duties for one hour on September 11, 1979.

While this Board recognizes that the Carrier may consider Claimant's poor prior personal record in measuring the amount of discipline to be assessed, the thirty day suspension was both excessive and unduly harsh punishment for Claimant's relatively minor infraction. Under the circumstances, a five day suspension is the maximum reasonable penalty for the offense. Accordingly, the suspension is reduced from thirty days to five days.

A W A R D

Claim sustained to the extent consistent with our 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 19th day of May, 1982.