

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
{ Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carmen W. C. Foster, J. C. Hunter, B. Clark, Jr., E. V. Ball and A. Dawkins, Hayne Shop, Spartanburg, S. C. were unjustly suspended from service for five (5) days from February 25th through February 29, 1980.
2. That accordingly, the Carrier be ordered to pay the above named Carmen five (5) days pay each plus six percent (6%) annual interest.

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 were given due notice of hearing thereon.

Five Claimants were charged with "dereliction of duty", and were assessed a five-day suspension by the Carrier following a formal investigation. The Organization contends that: 1.) the claimants were removed from service without just and sufficient cause; 2.) that the degree of punishment was exceedingly harsh; and, 3.) that the Carrier was arbitrary in the discipline assessed to individual employes based upon the facts.

The incident involved in this case was the meal period on the second shift. It was generally understood that the meal break was to be taken "around 8:00 P.M." No whistle indicated the beginning or end of the break. At 8:40 P.M., the Carrier's foreman found all five claimants in the washroom. The Agreement calls for a 15-minute meal period.

Suffice it to say, the record indicates contrary opinions as to whether the meal period on the second shift was to be taken at "exactly 8:00 P.M." or "approximately 8:00 P.M." However, the Carrier points out succinctly in its presentation that it would be impossible to exert any control of operations if employes were allowed to determine their own meal periods in such a large facility.

Reviewing the record, this Board finds that the following with respect to each Claimant:

Claimant Foster	Admitted being in wash room eating past the allotted 15 minutes
Claimant Clark	Admitted eating and making a phone call
Claimant Dawkins	Admitted eating making a phone call and overextending lunch period
Claimant Ball	Admitted being finished for ten minutes
Claimant Hunter	Admitted, with supporting evidence, that he continued to work, after being told at 8:05 P.M. that others were taking their lunch break; he finished two weld patches and a door handle subsequent to 8:05 P.M. before taking meal break.

This Board will not substitute its judgment for that of the Carrier, if evidence appears on the record and the reasonable inferences the Carrier makes thereof, to justify the Carrier's finding of fact and appropriate measure of discipline. Therefore, as to Claimants Foster, Clark, Dawkins and Ball, this Board concurs with the findings and measure of discipline deduced and imposed by the Carrier. However, we do not find "substantial evidence", nor the reasonable inferences thereof, as to Claimant Hunter, to support the finding of fact made by the Carrier. Therefore, the claim of Mr. Hunter is upheld. Claim for interest is denied.

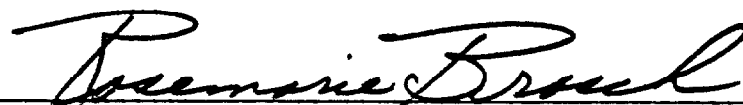
A W A R D

Claim sustained in accordance with 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 30th day of June, 1982.