

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, Carman Richard Castro, Shoreham Shops, Minneapolis, Minnesota was unjustly suspended from service for 15 days, from January 16, thru February 5, 1980 due to investigation held on December 19, 1979, being charged with violation of Rule (e).
2. That accordingly, the Soo Line R.R. Company be ordered to compensate Carman Castro for loss of 15 days, and all over time missed, at Carmen's rate of pay, for being unjustly suspended from service and that investigation be removed from his personal file for Soo Line R.R. Company violation of Rule 32.

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.

The Claimant in this matter is employed as a temporary carman at the Carrier's Shoreham Yards in Minneapolis, Minnesota. On December 7, 1979, the Claimant and a fellow employee had an argument over the use of a "T". Apparently both employees needed to use this particular tool and this situation precipitated the verbal exchange which led to the discipline, now being protested.

The Carrier presented two witnesses. Mr. George Bledsoe, the other employee involved testified as follows:

"Q. Mr. Bledow, will you relate to this hearing what remarks or actions did Mr. Castro make or say at about 2:30 P.M., December 7, 1979, at the west end Carman's Shanty?

A. I was sitting down, he was sitting down, and I asked him a simple question about the hose on the T that I was using on 1, and he got upset and he got mad at me and he said, he told me to be quiet, shut my mouth. I kept talking to him and he got more upset and he says anything else and I'll kick your ass. You keep talking and then he looked like he was going to pick up his helmet or his radio and throw at me...

This testimony was supported by evidence given by the Foreman that was called to the scene. The Foreman's testimony consisted of a restatement of what he had been told by Mr. Bledsoe. Throughout the investigation, the Claimant merely denied everything and offered a somewhat less colorful rendition of the incident, but no less believable than Bledsoe's version. We suspect that cases like this prompted the rule of restraint imposed on arbitrators by this Division. The carrier personnel had an opportunity to see all of the witnesses, to judge their demeanor and evaluate the testimony on a first hand basis. Such an opportunity is the only way to resolve a matter of pure credibility and that is the only true issue in this case.

However, the foregoing rule is a double edged sword. Mr. Bledsoe claims he was put in fear by Mr. Castro's conduct and exceptionally rough language. Maybe that is so, but not having seen the two principals, we have to give equal credence to Mr. Castro's version and, if you believe that, Mr. Bledsoe not only had nothing to fear but even more, Mr. Castro made no gestures which would have reasonable spawned fear in Mr. Bledsoe.

In assessing this matter one must remember that we are judging men working in a railroad yard and not members of the Minneapolis debating society. Language of the shops has been known to surprise and shock many people. While we certainly do not condone such language nor the racial slur attributed to Mr. Castro, to pretend that it is not used or that on occasion tempers are not lost is to delude oneself.

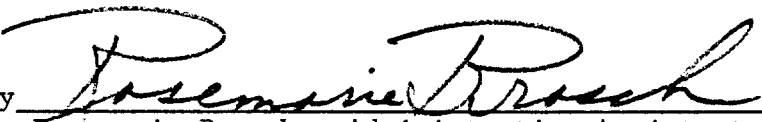
The evidence in this matter is substantial and supports some discipline for Mr. Castro. However, it is not substantial enough to support a fifteen (15) day suspension. Therefore, it will be reduced to a nine (9) day suspension.

A W A R D

Claim sustained in accordance with the finding.

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 22nd day of July, 1982.