

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Louisville and Nashville Railroad Company

1. (a) That Carman A. R. Gregg was improperly given a twenty (20) day actual suspension from service of Carrier from March 10, 1980, through April 4, 1980, inclusive in violation of Rule 34 of the Current Agreement by way of letter dated March 5, 1980, and

(b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Reed for all time lost as a result of said improper suspension, or one hundred and sixty (160) hours at the straight time rate of pay.

(c) Carrier should also be instructed to clear Carman Gregg personal file of all implications and allegations as charged.
2. (a) That the Carrier is improperly giving actual days suspension as discipline which is not in line with the provisions of Rule 34 Discipline, of the Current Agreement, and

(b) Accordingly, Carrier should be instructed to suspend such actions until such time as the matter of giving actual days off has been contractually agreed to.

Claimant, Mr. A. R. Gregg, worked for the Carrier since February 2, 1970 and at the time of the incident in question held the position of Carman at Carrier's Sibert Shop, Mobile, Alabama. On January 29, 1980 Claimant was notified to attend an investigation on February 12, 1980. He was charged as follows:

"... with the responsibility of being found asleep while on duty by Assistant Departmental Foreman T. S. Holland on January 19, 1980, between 1:45 A.M. and 2:00 A.M."

After the investigation was held as scheduled the Claimant was notified on March 5, 1980 that he had been found guilty as charged and that he was assessed thirty (30) actual days off without pay.

A review of the transcript of the investigation held on February 12, 1980 shows a sufficient quantum of substantial evidence to substantiate Claimant's guilt as charged. By Claimant's own admission he was guilty "of abusing the length of the coffee break ...", and according to Assistant Departmental Foreman T. S. Holland, Claimant was, during this time while he was abusing the length of the coffee break in the Eating Car, observed for 4 or 5 minutes to be sleeping and it was necessary to call his name 3 times before he responded.

The contention of the Organization in the present case, however, is not only that the Claimant is not guilty, which this Board respectfully disagrees with as noted above, but that the hearing was not fair and that the sanction levied against the Claimant by the Carrier was in contravention of Rule 34 of the controlling Agreement. That part of this Rule in dispute is the following:

"No employee shall be disciplined without a fair hearing by designated officers of the Carrier."

It is the claim of the Organization that this Rule, as written, does not permit Carrier to assess actual suspension days as a sanction against Carrier employees.

This Board finds no grounds on which to determine that the hearing was unfair. With respect to that part of Rule 34 which is in dispute this Board underlines that it finds it to be no more than the result of general language negotiated by the parties to the Agreement. By definition, general language, which is common in union contracts in all industries in the U.S., gives itself to variable interpretations: if the parties wish to specify further their set of understandings on discipline, or on anything else, they may always do so in succeeding rounds of collective bargaining negotiations. With all due respect to the prior Award 1195 (1947) which did not take a position on the meaning of the general language quoted above of Rule 34, this Board now rules that until and unless the Organization negotiates a specific meaning to this part of the Rule that there is no contractual burden on the Carrier to do other than to use common sense and fair management practices in issuing sanctions when it determines that an employee is guilty as charged. It is, of course, the contractual right of an employee, under Rules 32 and 33 of the same controlling Agreement, to appeal on merits or on procedural grounds any discipline received as a result of an investigative hearing.

A W A R D

Claim denied.

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Award No. 9376
Docket No. 9331
2-L&N-CM-'83

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 2nd day of February, 1983.