

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Controlling Agreement of September 1, 1949, as subsequently amended when on September 18, 1979, Upgraded Carman R. L. Robinson was given a formal investigation resulting in an arbitrary and capricious assessment of thirty (30) days actual suspension, effective, Tuesday October 16, 1979.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning and intent of Rule No. 37 of the Controlling Agreement.
3. That because of such violation and capricious action, the Norfolk and Western Railway Company be ordered to remove the thirty (30) day deferred suspension from R. L. Robinson's service record, and in addition be compensated for all lost time including Holidays, plus 6% on all such lost wages due to the thirty (30) day actual suspension.

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, Mr. R. L. Robinson, who holds the position of upgraded carman for the Carrier, received a notice dated August 16, 1979 that he was to report for a formal investigation to be held on September 18, 1979. He was charged with excessive absenteeism. As a result of the investigation Claimant was found guilty as charged and assessed a thirty (30) day deferred suspension which, in turn, activated an earlier thirty (30) day deferred suspension to an actual (calendar) suspension to run from October 16, 1979 to November 14, 1979. After appeals were made on property up to and including the highest designated officer of the Carrier, this case is now before the National Railroad Adjustment Board.

The Board finds no grounds to support the contention that Carrier violated Rule 37. According to the record, the use of tape recorders at hearings has precedent on this property, and if the Organization wished to check the accuracy of the written transcript against the recorded tapes it was offered the opportunity to do so during the appeal process on property. This Board has ruled in the past that the use of tape recorders at investigative hearings do not per se diminish the fairness of such hearings (Second Division 8451; Third Division 15890). The Board holds this to be such in the instant case.

A W A R D

Claim denied.

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.

In its appeals on property, and in its submission to this Board the Organization's claim is that the Carrier is in violation of Rules 21 and 37 of the controlling Agreement. For the record, these Rules state the following:

"Rule 21

An employee desiring to be absent from service must obtain permission from his foreman. In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

"Rule 37

No employee shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee will be appraised of the charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses, without expense to the Company, and shall have the right to be there represented by the duly authorized committee. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal.

Note: This Rule does not attempt to obligate the carrier to refuse permission to an individual employee in hearing involving charges against him, to present his own case personally. The effect of this rule, when an individual employee presents his own case personally, is to require that the duly authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the accused employee and the representatives of the carrier."

With respect to Rule 21, however, it should be pointed out that Claimant is not charged, by Carrier, with violation of this Rule, but rather with "excessive absenteeism". An analysis of the transcript of the hearing by this Board, as well as due consideration which it gives to past record when it is introduced on property with respect to any given investigation, convinces this Board that sufficient substantial evidence is present to warrant that Claimant is guilty as charged. Excessive absenteeism, which may be defined in principle as that point, because of absences, when an employee becomes a liability rather than an asset to a Carrier, has not been sanctioned by prior Awards of this Board (Second Division 6240, 7348, 9158 inter alia). The instant record shows that the Claimant did not pass a reasonable test of the principle noted above.