

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
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. (a) That Carman R. Bryant, Jr., was improperly given a thirty (30) day actual suspension from service of Carrier from December 18, 1979, through January 17, 1980, inclusive in violation of Rule 34 of the Current Agreement by way of letter dated December 12, 1979, and
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Bryant for all time lost as a result of said improper suspension, or one hundred and seventy-six (176) hours at the straight time rate of pay, plus all overtime lost.
- (c) Carrier should also be instructed to clear Carman Bryant's 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.

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, M. R. Bryant, Jr., who was employed as a carman working for the Carrier, received two separate notices on November 5, 1979 to attend investigations. The first notice dealt with his alleged unsafe operation of Carrier vehicle #T-3493 on October 30, 1979 in violation of the Louisville and Nashville Instructions for Operation and Maintenance of L and N Vehicles. Claimant was accused of allegedly backing this truck into the privately owned car of another carman, which car sustained approximately \$100.00 in damages. Hearing on this

issue, originally scheduled for November 14, 1979 was subsequently held on November 19, 1979. (*) The second notice dealt with the charge of alleged insubordination by Claimant on November 3, 1979. On that date Claimant was purportedly instructed by Assistant Departmental Foreman, R. D. Bean to come to the rip track at 7:00 A.M. and he neglected to do so. Hearing on this issue, originally scheduled for November 15, 1979 was subsequently held on November 19, 1979 also. (**) As a result of these two hearings Claimant was assessed thirty (30) days actual suspension from service.

In the instant case the Board is presented with a number of issues. The first and second deal with the Organization's claim that the hearing was not conducted in a fair and impartial manner and that the Carrier was in violation of Rule 34 of the controlling Agreement when it assessed Claimant an actual suspension of thirty (30) days. The third issue deals with whether sufficient substantial evidence was present to warrant a finding of guilt on both charges levied against the Claimant.

This Board finds no grounds on which to determine that the hearing was unfair. That part of Rule 34 of the controlling Agreement 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 here underlines that it finds that part of Rule 34 which is in dispute 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.

The application of the sanction of thirty (30) actual suspension days under Rule 34, however, hinges on the presumption of Claimant's guilt on all counts with which this Board has some problems after a close analysis of the transcript of the hearings which took place on November 19, 1979. With respect to Claimant's alleged violation of the Instructions for Operation and Maintenance of L and N Vehicles the Board notes witness testimony of the mechanical defects of the

(*) Carrier submission mistakenly states that the hearing was held at 9:00 A.M. on November 14, 1979, instead of at 9:00 A.M. on November 19, 1979 (p.8).

(**) Carrier submission mistakenly states that the hearing was held at 9:00 A.M. on November 15, 1979 instead of at 11:45 A.M. on November 19, 1979 (p. 10).

vehicle in question and the Board has great difficulty applying the principle of adequate substantial evidence in order to arrive at a verdict of guilt. Railroad employees must exercise habits of safety, but Carriers are also under the weight of responsibility of providing mechanically safe equipment and it is far from clear to the Board that the Carrier fulfilled this obligation in the instant case. In short, substantial evidence is not present in sufficient degree to permit the Board to sustain Carrier on this charge. On the other hand, the record of the transcript relating to the charge of insubordination indicates that Claimant was aware of the order given by Mr. R. D. Bean, the Assistant Department Foreman, who was his supervisor at the time. It may well be, in the mind of the Board, that Claimant did not disobey this order out of ill-will but rather because of certain assumptions he held about the relationship between this order and a possible ride home which he could have received with Mr. Bean; nevertheless, it was Claimant's obligation to establish the relationship between his assumptions and the facts which he could have done by reporting to the car shop office prior to going home. But he failed to do this. The Board must sustain the Carrier on this charge.

Given the Board's determination on these issues, therefore, it directs that the thirty (30) day actual suspension be reduced to a fifteen (15) day actual suspension and that Claimant be made whole, at straight time rate of pay, for one half of the compensation he lost while out of service.

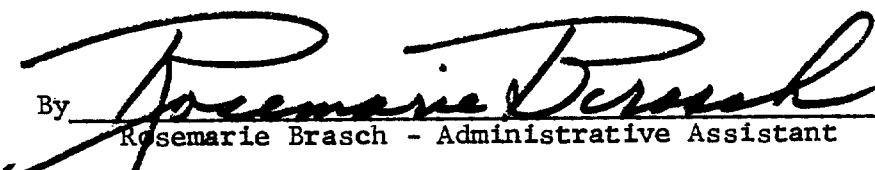
A W A R D

Claim sustained to the extent indicated in 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 2nd day of February, 1983.