Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9393
Docket No. 8957
2-SCL-CM-'83

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

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

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad violated Rules 30 and 32 of the controlling agreement in the case of P. D. Welsh, Sr., Cayce, South Carolina. These violations by the Carrier are procedural defects and are listed below:

(a) Mr. Welsh was suspended unjustly (this was not a proper case for suspension), and although, he was restored to service immediately after the investigation closed, he was not compensated for the wages lost.

(b) Mr. Welsh was not apprised in writing of the precise charge against him.

(c) Local Chairman J. H. Royal was never apprised in writing of the charge against Mr. Welsh.

(d) Mr. Welsh did not receive a fair hearing due to his being removed from service and charged by Trainmaster W. L. Price, Jr. who, also, conducted the investigation and recommended to Superintendent W. E. Satterwhite the discipline to be imposed.

(e) Mr. Welsh was disciplined by Mr. Satterwhite and the discipline upheld by Senior Director of Labor Relations, Mr. D. C. Sheldon for alleged violation of Company rules which Mr. Welsh was not charged with having violated in the notice of investigation, nor did the Record prove he violated these rules.

(f) Master Mechanic A. R. Keith in his letter declining the claim of Mr. Welsh violated Rule 30 when he did not give the reasons for such disallowance.

(g) Mr. Welsh's representatives, on two occasions before the investigation, were denied copies or access to evidence and charges to be presented against Mr. Welsh.

2. That under the terms of the controlling agreement, Carman P. D. Welsh, Sr. was unjustly deprived of his rights to service from March 30, 1978 to April 4, 1978.

3. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Mr. Welsh for eight (8) hours each day, March 30, 31 and April 3, 1978 at pro rata rate and clear his personal record file of this unjust charge and discipline.

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.

Early on the morning of March 30, 1978, while driving to work at Carrier's Cayce, South Carolina Train Yard, Carman L. Jones experienced automobile trouble so he parked his auto and walked to work. It was Mr. Jones' intention to make arrangements to retrieve his automobile later that day after work.

At approximately 6:00 A.M. on that same morning, Claimant, a Carman at the Cayce Yard, and two (2) other employes, Switchman N. McGee and Carman J. Mooneyman, while driving back to work from their breakfast break, recognized Mr. Jones' automobile parked on the street where he had left it, and they proceeded to play a "practical joke" on Mr. Jones. Mr. McGee, who was driving his own automobile at the time, stopped and asked Claimant, a passenger in Mr. McGee's car, for a "bad order tag". Claimant gave Mr. McGee the tag as he had requested, whereupon Mr. McGee wrote a crude statement on the tag and signed his own name to it, and he then placed the tag on Mr. Jones' disabled vehicle. The three (3) men then drove off and returned to the Train Yard to complete their work assignments.

After he left work later that same morning, Mr. Jones returned to his automobile and he discovered that "... someone had broken into ... (it) ... damaged it and had stolen some equipment out of ... (it)." Mr. Jones then contacted the Cayce Police who conducted an investigation of the incident during which time they found the bad order tag which Mr. McGee had left on Mr. Jones' automobile and which bore Mr. McGee's name. Because of this discovery, the Police visited Carrier's Train Yard and interviewed Claimant and the other two (2) employes. On the basis of this interview, however, the Police determined that neither of the three (3) employes were responsible for damaging Mr. Jones' automobile.

As a result of this incident, however, Claimant was notified by Carrier that he was to attend an investigation on April 4, 1978, to:

"... develop facts and place your responsibility, if any, in connection with incidents involving Car Inspector Larry Jones' automobile at about 6:00 A.M., March 30, 1978 at Cayce, South Carolina."

Claimant's investigation was conducted as scheduled and, as a result thereof, Claimant was found guilty of violating Carrier's Mechanical Rule 12 and Operating Rules 702 and 721, and he was assessed a five (5) days actual suspension as discipline. Said suspension is the basis of the instant claim.

Despite the extensive argumentation which has been presented by the parties concerning both the merits and the various other procedural aspects of this dispute, there is no apparent need to burden this award with an itemization of the specific rationale which has been used by the Board in reaching a decision in this matter. Suffice it to say that Carrier did not err in applying the above cited rules to the instant case; and that said rules, in and of themselves, are reasonable, and are clearly related to the orderly operation of Carrier's business. Organization's contention that Carrier is barred from action in this matter is totally unsupportable. Moreover, the instant case manifests the precise reason why Carrier has seen fit to promulgate and implement such rules. Had Claimant and his cohorts not engaged in their "practical joke" on the morning of March 30, 1978, then they would never have been associated with the incident whatsoever. The "link" in this entire incident was the bad order tag which Claimant willingly tendered to Mr. McGee for his own improper use.

Having made the above determination, however, the Board, in all good conscience, cannot support the imposition of a five (5) days actual suspension as the proper penalty to have been assessed by Carrier in this matter. Given the minor nature of Claimant's proven offense, it would appear that the proper penalty, under the circumstances, would have been a written reprimand. To have assessed any greater penalty would have been a gross miscarriage of justice -- which this Board cannot and will not condone.

A W A R D

The instant Claim is sustained in part and denied in part in accordance with the Findings. Claimant's suspension shall be rescinded and replaced instead with a written reprimand; and Claimant shall be reimbursed for all lost wages as a result of this incident.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of February, 1983.