

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

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employee:

1. That under the current Agreement, Mechanical Department Electrician B. A. Cheshire was unjustly treated when he was suspended from service for a period of thirty (30) working days commencing November 19, 1979 to and including December 28, 1979, following investigation for alleged violation of portion of Rule 802 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines). Said alleged violation occurring on September 30, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to:
 - (a) Compensate Electrician B. A. Cheshire for all time lost during the thirty-day suspension; and the loss of wages to include interest at the rate of six percent (6%) per annum.
 - (b) Pay employe's group medical insurance contributions, including group medical disability, dental, dependent's hospital, surgical and medical, and death benefit premiums, and railroad retirement contributions for all time that the aforesaid employe was held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employe.

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. B. A. Cheshire, entered service of the Carrier as an electrician on May 28, 1974. He resigned from the service of the Carrier on October 24, 1980. On October 5, 1979 Claimant was notified to report for formal investigation on October 18, 1979. He was charged with violation of Rule 802 of the General Rules and Regulations of the Carrier. This Rule reads, in pertinent part:

"Indifference to duty, or to the performance of duty, will not be condoned."

After postponement by Carrier, the hearing was held on October 30, 1979. On November 13, 1979 Claimant was notified that he was assessed a thirty (30) working day suspension for indifference in covering his assignment as an electrician on September 30, 1979. After the Organization appealed this case in an orderly and timely manner on property with all Carrier officers designated to handle such disputes, it is now before the National Railroad Adjustment Board.

The record before this Board indicates that the hearing into this matter on property was handled in a fair and proper manner by the Carrier in accordance with Rule 39 (Discipline-Suspension-Dismissal) of the controlling Agreement.

On September 30, 1979 Claimant was assigned by his foreman to do electrical repair work on four (4) cabooses for trains running from Ogden, Utah. These cabooses were then released for service at the end of this working day after repairs were reportedly completed. It was subsequently discovered that two of them, Nos. 4119 and 4203, were not in proper repair and had to be returned to the caboose track for additional maintenance. The battery in caboose No. 4119 were dead, and caboose No. 4203 had an electrical problem in a light switch.

The transcript of the hearing presents the Board with inconsistent testimony. Both the car foreman and a carman testified that by the end of the shift on September 30, 1979 the Claimant had given his "O.K." that the cabooses were ready for service. In addition, it was the judgment of the assistant terminal superintendent that the work required on these four (4) cabooses could be done within a one workshift period. The Claimant testified, however, that he did not give his "O.K." for the release of at least one of the cabooses, No. 4203.

The Board has gone on record in numerous past Awards to the effect that in its appellate role it shall not resolve credibility questions (Second Division 6408, 6604; Third Division 14556, 19696 inter alia). But in the present case, the Board must deal with more than this anomaly, it must also address the question of why caboose No. 4119 did not function adequately when there was no denial by the Claimant that it had been released for service. Why the batteries in No. 4119 went dead may be a "mystery" as Organization suggests in its submission although an alternative interpretation i.e. that it had not been properly serviced before release, appears also as a reasonable explanation by this Board, thus warranting the conclusion that Rule 802, which addresses "indifference to ... performance of duty", was violated in the instant case. At the very least the unresolved electrical problem in No. 4119, as well as the car foreman's testimony that the radio case in No. 4203 was broken and held together with string, and Claimant's testimony that he "never (even) noticed (this)" indicates to this Board carelessness and less than proper attentiveness to detail. This Board finds that sufficient substantial evidence is present, therefore, to permit it to hold intact Carrier determination in this matter.

A W A R D

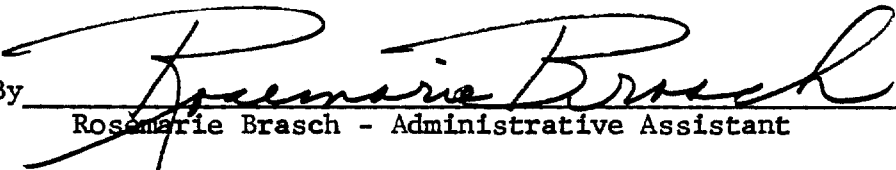
Claim denied.

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Award No. 9402
Docket No. 9326
2-SPT-EW-'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 March, 1983.