

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
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, the Burlington Northern Inc., arbitrarily and with clear discrimination unjustly suspended Shop Electrician Helper V. L. Larson from its service for a period of ten (10) days.
2. That further in violation of the controlling Agreement, Carrier failed to afford Claimant Larson a fair and impartial investigation as required by the Agreement.
3. That accordingly, the Burlington Northern Inc., be ordered to compensate Electrician Helper V. L. Larson eight (8) hours pay at the pro-rata rate for each day she was withheld from service as the result of the ten (10) day suspension and in addition remove from her personal record all record of the suspension. Claim to begin July 10, 1980.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, Ms. V. L. Larson, regularly employed by Carrier as shop electrician helper, received notice on June 2, 1980 to attend an investigative hearing on June 12, 1980. She was charged with alleged failure to comply with instructions. On July 8, 1980 Claimant was notified that she had been found guilty as charged and was being suspended from service for ten (10) days. After appeals by the Organization on property in a timely manner with all Carrier officers authorized to receive such appeals, this case is now before the National Railroad Adjustment Board.

Organization claims that the procedures used by Carrier were in contravention of working Agreement Rule 35 (a)(g) because the same Carrier officer, Shop Superintendent, M. L. Varns filled the multiple roles of conducting the investigation, assessing discipline and denying first line of appeal is duly noted by the Board. This Board has gone on record in past Awards, some of which are cited by the Organization (Second Division 4536 and 7119 inter alia), to the effect that it

has sustained claims on procedural grounds when the same officer fulfills multiple roles to the extent that due process is obviated. This is not, however, the situation in the instant case. Appeal of the decision by Mr. Varns (*) was directed by the Organization on property to both the Assistant Vice President-Mechanical, Mr. R. E. Taylor and to the Assistant to the President, Mr. L. K. Hall both of whom could have reversed and/or amended the initial assessment of discipline.

Organization also raises the issue of Carrier discrimination against Claimant under Sec. 10 and Sec. 212 of the Federal Railroad Safety Act. With respect to this it is clear that this Board, under the Railway Labor Act, has no jurisdiction to interpret federal law but that its appellate role is limited to the consideration of claims that have been handled "in the usual manner" on property. The Claimant shall not be prejudiced, however, nor shall her rights be disturbed by the Board's lack of jurisdiction in this matter.

The narrower question, therefore, on which the Board is asked to rule is whether Claimant did, in fact, "comply with instructions from (her) Superior in regards to parking (her) car in a 'no parking' area on the northeast side of (the diesel) shop on Thursday, May 29, 1980".

The transcript of the hearing before the Board shows that Mr. D. A. Andersen, Foreman of Locomotives, and Claimant's direct supervisor testified that he instructed Claimant not to park in the area in question, in accordance with a Carrier directive of July of 1978. Claimant admits that she did not comply with Carrier Safety Rule 667, Form 15001 which states: "Employees must comply with instructions from proper authority". The Board will not, therefore, disturb Carrier's finding of guilt in the instant case. The only issue which remains to be considered is whether the sanction assessed the Claimant was reasonable. The Board notes with interest certain special circumstances in this case: there was no "no parking" sign in the area in question; a memo which informed the employees not to park in this area had never been seen by Claimant, nor by three other witnesses at the hearing; and none of the three witnesses for the Claimant, two electricians and a machinist, had themselves ever been told not to park in the area, and at least one of these witnesses did habitually park at the locale in question on occasion. In addition, there is some reason to believe that Claimant parked in this area because she was the only female to leave the work area at a late hour and that she thought this parking area to be somewhat safer than

(*) There is some discrepancy, although that remains immaterial to the narrower procedural question at hand, concerning Mr. Varn's actual authority to issue discipline decisions in the first place. Mr. Taylor, Asst. V.P.-Mechanical, implies in his letter to Mr. Ben F. Tangeman, General Chairman, IBEW that Mr. Varns does not have this authority (Employee Exhibit H), whereas Mr. Hall, Asst. to the Vice President, states that he finds it "proper" that the investigating officer "should render the initial decision" (Employee Exhibit K).

others. None of these reasons nullify the infraction Claimant committed but they put in clearer context an appropriate application of the rule or progressive discipline. In view of these facts, therefore, the Board finds that the ten (10) day actual suspension is unduly severe, and the Board rules that a ten (10) day overhead suspension, followed by a six (6)-month probationary period, sufficiently fulfills the requirements of the rule of progressive discipline in the instant case since this is the Claimant's first known infraction. It also directs that she be paid eight (8) hours straight time pay for each day she lost while being withheld from service because of the actual suspension assessed on July 10, 1980.

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 March, 1983.