

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

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That the National Railroad Passenger Corporation (Amtrak) be ordered to restore Machinist Charles L. Davis to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinists' rate of pay.
2. That Machinist Charles L. Davis be made whole for any and all insurance benefits, vacation benefits, holiday benefits, seniority and any other benefits that may have accrued and were lost during this period, in accordance with the prevailing Agreement dated September 1, 1977, as subsequently amended.

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. Charles L. Davis, entered service of the Carrier on September 23, 1976. On April 1, 1980 Claimant and co-worker and fellow machinist, Karl Walter, were notified to attend an investigation on April 9, 1980. They were charged with violation of Carrier Rules of Conduct "F", "H" and "I" which read as follows:

Rule F:

"Safety is of first importance in the discharge of duty and in case of doubt or uncertainty, the safe course must be taken. Employees shall comply with safety regulations and must exercise care to prevent injury to themselves or others. Employees will not be retained in the service who are careless of the safety of themselves or others."

Rule H:

"Employees must take every precaution to guard against loss and damage to the Company property from any cause."

Rule T:

"Company premises must be kept in clean, orderly and safe condition. Company buildings, facilities or equipment must not be marred or defaced. Only information authorized by the supervisor or required by law may be posted in or upon Company property."

After postponement the hearing was held on May 5, 1980. On May 13, 1980 Claimant was informed that he had been found guilty as charged and was terminated from service as of May 14, 1980. Machinist Walker received a reprimand which was later, on appeal, removed from his record.

An analysis of the hearing transcript and accompanying exhibits by the Board shows that two witnesses, the assistant trainmaster and a Carrier police officer both testified that Claimant admitted to positioning metal plates against the Northeast and Southeast doors of the 21st Street Wheel House on March 19, 1980. When these doors were opened by these witnesses the metal plates fell on railroad torpedos which Claimant also allegedly admitted placing in front of the doors thus creating an explosion. This testimony is supported by separate statements written by these two witnesses on March 19, 1980. During the course of the hearing, however, Claimant denied that he had placed these metal plates and these torpedos near these doors.

Evidently the Board is here confronted with conflicting evidence. In this respect the Board has gone on record on numerous occasions in the past to the effect that it will not resolve issues of pure credibility in its appellate role, and if "there is evidence of a substantial character in the record which supports the action of the Carrier, and it appears that a hearing has been accorded the employee charged, a finding of guilt will not be disturbed by this Board" (Second Division 1809; see also Third Division Awards 13475 and 19696 inter alia). In the instant case the Board determines that sufficient evidence of a substantial nature exists to warrant a finding of guilt. Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Board 305 U.S. 197,229).

The only question to be resolved, therefore, is whether the sanction levied by Carrier is reasonable, given the facts of the instant case. This Board has also gone on record to the effect that discipline is not to be only punitive, but that it should serve a corrective and training measure for employees (Third Division Award 19537 inter alia). The application of the principle of progressive discipline, however, must be in the context of additional considerations such as the past record of the employe and the seriousness of the infraction (Second Division Award 2066). The Board notes that the Claimant has no past record of malfeasance, yet at the same time it considers the infraction committed to be of such serious consequences in terms of safety to both the employee and his fellow workers that it cannot, in the instant case, question the action of the Carrier in the discipline it assessed.

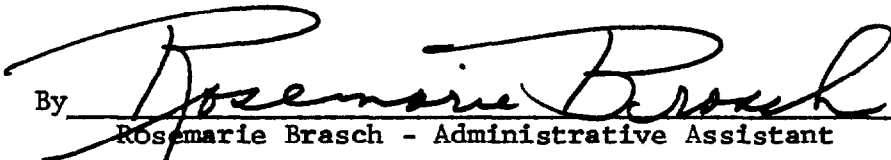
A W A R D

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 March, 1983.