

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the action of the Consolidated Rail Corporation (Conrail) in assessing five days deferred suspension to Electrician L. P. Robinson was unjust, arbitrary and a deliberate abuse of power by the Carrier.
2. That the Consolidated Rail Corporation (Conrail) be ordered to remove the five days deferred from the record of L. P. Robinson.

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.

The Claimant is Electrician L. P. Robinson, who at the time of this dispute had approximately ten and one-half years of service and a clear disciplinary record. Mr. Robinson was notified by letter dated January 3, 1980 to appear for a trial on the following charges:

- "1. Failure to properly protect your work assignment December 31, 1979 by not completing your normal tour of duty.
2. Leaving Company property without sufficient reason or proper authority on December 31, 1979."

The trial was held on January 24, 1980 and February 13, 1980. By letter dated February 28, 1980, Mr. Robinson was notified that he was assessed discipline of fifteen (15) days deferred suspension. Appeal from this discipline was made, and at a conference on the appeal held on March 18, 1980, the Manager of Labor Relations reduced the fifteen days deferred suspension to five days deferred suspension. The matter was progressed on the property in the usual manner; and it is properly before this Board.

The Organization contends, among other things, that there was not a fair and impartial investigation because of the statements of Mr. Jolley as brought out in the transcript. The Organization states that the Trial Officer is Mr. Jolley's subordinate and based on the statement made by Mr. Jolley, he had to have been biased against Mr. Robinson.

The Carrier contends on this matter, that the Board does not know whether Mr. Jolley made the statement. And even if he did, such statements have no bearing on the case. The Carrier contends that Mr. Robinson was assessed the 5 day deferred suspension based solely on the evidence of record.

The transcript states:

'Q. For the record, state your full name.  
A. Raymond J. McMullen. \*\*\*

Q. Length of service and occupation on 12/31/79?  
A. 11 years, Machinist

Mr. Hesley: Mr. Robinson or Mr. Longo, you may question your witness.

Mr. Longo questions Mr. McMullen:

Q. Yes, Ray, on 1/8/80 we met with all the union chairmen and Mr. Jolley and Mr. Rogus for our monthly meeting; could you please explain to the Trial Officer just exactly what happened that day in reference to these trials the carrier is conducting?

A. Yes, the different union people started to discuss charges against the individuals who went early the day before New Years and one union man, Mr. Plisinski, went on to say all these trials were having an effect on the employees by low morale, etc. Mr. Longo stated he thought these trials here on employees going home early the day before New Years was a waste of time and money. At that time, Mr. DeMemo, TWU representative, said not to be too much concerned about the trials because they had charges, similar charges, brought against their members and when they went to Philadelphia they were thrown out. At that point Superintendent Jolley stood up and said he had personally reviewed all charges brought against each employee and he said we are going to make them stick this time. At that time I think he realized he made a mistake, lost his composure, became angry, and put his hard hat on and stomped out the door. Mr. Rogus stayed for the rest of the meeting and tried to apologize for Mr. Jolley's statement and actions he displayed, saying Mr. Jolley wasn't feeling good and he shouldn't have been here that day. After Mr. Jolley left then all of us present, even Mr. Rogus was in on the conversation, and it was the general consensus of everyone in the room that the statement Mr. Jolley made, that he prejudged the trials of all the employees being brought up on charges." (emphasis added)

The record indicates that at the time of the trial Mr. J. V. Jolley was the General Superintendent Locomotive Repair, Mr. R. C. Hesley was the General Foreman working under Mr. Jolley, Mr. E. F. Rogus was the General Superintendent Comp. Remfg.; and Mr. L. J. Longo was the Local Chairman, IBEW, who was Mr. Robinson's representative at the trial and was also present when Mr. Jolley spoke at the monthly meeting with all union chairmen of the shops.

The Carrier contends that the Board does not know that Mr. Jolley made the statement set forth above. The testimony of Mr. McMullen is clear; and it was not rebutted at the Trial or at any time during the handling of this case on the property. We must find that Mr. Jolley made the statement as reported by Mr. McMullen.

The role of "trial", "investigating" or "hearing" officers in disciplinary matters in the railroad industry is most unusual in comparison to other organized industries in this Country where when the parties cannot agree on the disposition of a matter of discipline a disinterested third party is selected with both the company and union participating in the selection process, and this individual makes the credibility determinations. Much has been written and said about the high degree of integrity and impartiality owed the parties by these third party labor arbitrators. The railroad industry is unique in that a carrier officer, a management official, while serving as trial or hearing officer, has the responsibility of making credibility determinations, often between conflicting testimony of fellow carrier officers and employees represented by a union; and these determinations will not be set aside by the arbitration tribunals which exist under the Railway Labor Act so long as the officer's findings are supported by substantial evidence of record. Carrier officials serving as trial or hearing officers have the same high responsibility as labor arbitrators (as well as jurors or judges) called upon to determine questions of fact. The Carrier must not take any action that might influence or taint this very delicate process.

Mr. Jolley's statement indicates that he had personally reviewed all charges brought against each employee and concluded "we" are going to make them stick this time. Since Superintendent Jolley was the trial officer's superior; and Superintendent Jolley had publicly communicated prior to the trial that -- he had reviewed all charges against each employee and that we are going to make them stick this time -- we find that Superintendent Jolley destroyed the delicate balance which must exist for trial officers to make credibility determinations without influence from superior officers. Credibility issues existed in this case. Mr. Jolley had prejudged the case and publicly delivered his determination some two weeks prior to the start of the trial.

The claim is sustained to the extent that the Carrier is ordered to remove the five day deferred suspension from the record of L. P. Robinson.

A W A R D

Claim sustained.

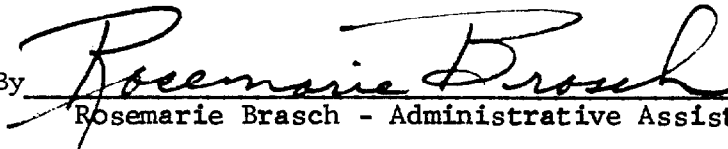
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Award No. 9567  
Docket No. 9548  
2-CR-EW-'83

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 13th day of July, 1983.