

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current agreement, the Soo Line Railroad Company, violated Rules 31 and 32 of Shops Craft Agreement of November 1, 1980, when unjustly suspended Carmen George Whitehurst and P. Huseby, Shoreham Transportation yard, Minneapolis, Minnesota for 2 working days, due to investigation held on December 23, 1980, charged with playing cards during their tour of duty and unjustly assessed a letter of reprimand to Carman M. Gaffaney charged with playing cards and trespassing on Soo Line property.
2. That accordingly, the Soo Line R.R. Company be ordered to compensate Carmen G. Whitehurst and P. Huseby, 2 days or 16 hours at Carmen's rate of pay, for being unjustly suspended from service and have the investigation removed from their personal file. Also, to remove letter of reprimand from the file of Carman M. Gaffaney, which was unjustly assessed for an unfair hearing, violation of Rule 32.

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.

This dispute results from an incident which occurred on December 16, 1980. At that time, the Claimants were found to be playing cards on the property. Two of the Claimants were charged with playing cards (cribbage) during their tour of duty. The third Claimant, who was not on duty status, was cited for playing cards and trespassing. Following an investigation, the two Claimants on duty were suspended from service for two days and the other Claimant received a letter of reprimand.

The Organization raises a due process threshold issue, contending that the transcript of the hearing is defective, thus denying the Claimants a full and impartial investigation as required by the parties' controlling agreement. Because of the nature of the Board, the integrity of the transcript or its propriety may not be in

question. However, in this case, in which the Organization asserts improprieties in the record before us, a careful review discloses no evidence that anything substantial is missing which would have deprived the Claimants of a fair investigation.

In regard to the merits, there is no dispute that the three Claimants were playing cards. There is dispute, however, whether or not the Claimants were on their 20-minute lunch break and, if they were, what impact that fact would have on the discipline imposed. Essentially, the Organization contends that lunch periods vary and that employees eat when they have the opportunity, dependent upon the work. The Carrier essentially maintains that there is no evidence in the record to indicate that Claimants were unavoidably detained from observing their lunch period within the 5th hour of the tour. Certainly, Carrier has a right to proper conduct of its employees on the property in order to ensure that its primary mission may be accomplished without undue interruption, provided it does so reasonably. We do not find in the record, however, that this authority included instructions, verbal or otherwise, that would restrict the rights of off-duty employees to come on the property. In the absence of well-defined instructions or understandings as to the restriction of employee activities during lunch break and absent a showing that the activity which occurred adversely impacted Carrier's operation, we find that the penalty imposed, under the facts and circumstances presented, was unduly harsh.

Accordingly, given the record before us, the suspension of two work days is reduced to one work day and the two Claimants made whole for one work day each. The letter of reprimand will be removed from the third Claimant's file.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983.