

The Second Division consisted of the regular members and in addition Referee John Phillip Linn when award was rendered.

(Brotherhood of Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Illinois Central Gulf Railroad

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman R. G. Allen, East St. Louis, Illinois was unjustly disciplined without an investigation when he was instructed to go home on June 8, 11 and 12, 1979 for alleged refusing to wear his safety goggles while in the dressing room.
2. That Carman Allen was not afforded a fair and impartial investigation to determine whether or not he was sent home on June 8, 11 and 12, 1979 or whether he left his assignment voluntarily.
3. That accordingly, the Illinois Central Gulf Railroad be ordered to compensate Carman R. G. Allen for eight (8) hours at the pro rata rate for time lost on June 8, 11 and 12, 1979, account being unjustly disciplined.

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.

By letter dated August 7, 1979 from Local Chairman J. E. Allred to General Car Foreman W. R. Fillback, the Organization filed a claim on behalf of Carman R. G. Allen (Claimant), stating that on June 8, 11 and 12, 1979, the Carrier was in violation of General Agreement Rule 39 when Repair Track Foreman Pelly sent the Claimant home because he refused to wear his safety goggles inside the dressing room. Reference was made to the first sentence of Rule 39, which reads: "No employe shall be disciplined without a fair hearing by a designated officer of the Carrier."

General Car Foreman Fillback responded to Local Chairman Allred by letter dated September 20, 1979, stating that on June 8, 1979, Claimant arrived at work late, went onto the repair track without wearing his safety glasses and was advised by Foreman Pelly that if he wanted to work he would have to wear his safety glasses. Allegedly, the Claimant refused to wear his glasses


Because the Carrier did not conduct a hearing, the Board holds that there has been a contract violation. The Carrier must compensate the Claimant for wages lost on June 8, 11 and 12, 1979.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.

and decided to go home rather than wear his glasses on the job. Further, it was stated that the same facts occurred on June 11, 1979. Mr. Fillback stated that on June 12, 1979, the Claimant did not report for work and did not call in to report that he would not be at work. Mr. Fillback noted that the foremen have been instructed that all employees are to wear their safety glasses at all times while on duty, which instructions are in conjunction with Safety Rules 20, 21 and 22; and that office records kept by the Carrier's Timekeeper would verify the dates involved. Consequently, the claim was declined by the General Car Foreman.

The fundamental issue to be decided by this Board is whether the applicable Agreement was violated by the Carrier when it refused to conduct an investigation of the claim that the Claimant was disciplined without an investigation in contravention of his rights under the Agreement. It is the opinion of this Board that the issue must be decided in the affirmative.

The Carrier's submission contradicted the September 20, 1979 response of General Car Foreman Fillback concerning events of June 12, 1979. (Mr. Fillback stated that the Claimant did not report for work at all and did not call in to report that he would not be at work on June 12, 1979.) The Carrier's submission stated that the Claimant reported for work on June 12, 1979 "and was given the same ultimatum by his foreman" as was given on June 8, 1979 and June 11, 1979. Further, the Carrier's submission noted that the Claimant had worked for two (2) hours and thirty-eight (38) minutes on June 8, 1979 and for seventeen (17) minutes on June 11, 1979, for which the Claimant had been paid.

The Organization asserted that if the facts were that the Claimant refused to wear his safety goggles while on the repair track, it is most reasonable to conclude that the action taken against the Claimant constituted a form of discipline.

Although the Carrier was satisfied that the Claimant's loss of wages on June 8, 11 and 12, 1979, resulted from the Claimant's voluntary determination to leave work rather than to wear safety glasses on the repair track, neither the Claimant nor the Organization admitted those facts. The Carrier would have this Board make a determination that the Organization's contentions, that the Claimant was sent home by Foreman Pelly because the Claimant did not wear his safety goggles inside the dressing room, were wholly without merit and that no discipline was ever issued. This Board will not make such a determination in the first instance when the contested facts placed an obligation on the Carrier to conduct an investigation to determine the facts.

As an employe subject to the Agreement, the Claimant had a right under Rule 37 to have his claim presented to the Carrier when he believed that he had been unjustly dealt with or that any provisions of the Agreement had been violated. When it was claimed that the Claimant was disciplined without an investigation in violation of Rule 39, it was incumbent upon the Carrier to make a factual determination as to whether the Claimant had been disciplined. and, this determination could not be made without a full, fair and impartial investigation. A hearing was necessary to determine whether the Claimant had been disciplined as he asserted. A carrier cannot unilaterally decide that a Claimant has not been disciplined and thereby deny him the benefits of the Agreement. The Claimant was entitled to a hearing under his claim as a matter of contractual rights.