

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

Parties to Dispute: (Sheet Metal Workers' International Association
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(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That claimant was unjustly disciplined when he was arbitrarily and capriciously suspended from service by Carrier on July 4, 1981, with insufficient cause and without a fair hearing, in violation of Rule 39 of the current Motive Power and Car Department Agreement.
- (2) That 15 day suspension assessed against claimant T. C. Sipes be rescinded and that his wages be paid for the 15 days lost in addition to pay for all overtime lost during the time claimant was held out of service from July 4, 1981 to August 22, 1981, plus an amount of 12% interest per annum compounded on anniversary date of claim.
- (3) Make claimant whole for all vacation rights.
- (4) Reimburse claimant for all medical and dental expenses incurred while improperly withheld from service.
- (5) Pay to claimants estate whatever benefits claimant has accrued with regards to life insurance for all time improperly withheld from service.
- (6) Pay claimant for all contractual holidays.
- (7) Pay claimant for all other contractual benefits.
- (8) Clear claimants personal record of the unjust hearing and suspension.

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 employes 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 was notified to attend a formal hearing in connection with his alleged refusal to accept a work assignment on July 4, 1981. Subsequent to the hearing, the Claimant was found guilty and was suspended from service for a period of fifteen (15) days.

At the outset, the Organization contends two procedural errors: (1) Claimant was improperly removed from service pending a formal hearing; and, (2) the hearing itself was not a fair and impartial proceeding essentially because the Hearing Officer refused to allow an Organization witness to testify on behalf of the Claimant and because of the manner in which he conducted the hearing itself.

With respect to the Claimant's removal from service at the time of the incident which led to this dispute, we find the Carrier's action does not contravene the parties' contractual provisions.

Concerning the conduct of the Hearing Officer, the Organization's contentions that the Hearing Officer significantly restrained the fact-finding process is borne out by the record. For it to be legitimate, disciplinary actions require the fair and impartial trial agreed upon in Rule 39 of the parties' controlling agreement. The Carrier's Hearing Officer carries a heavy burden in this respect, because he controls the hearing process, which has as its ultimate purpose the airing of all relevant facts pertaining to the incident in question. Here, the Hearing Officer, on numerous occasions, restricted the development of the Organization's arguments before he had sufficient knowledge as to whether the argument being developed by the Organization was or was not material. For example, in the instant case a witness was not allowed to testify because he was not an eye witness to the incident under dispute. Although cause for rejection on this basis is not entirely without merit, this rejection followed the Organization's specific request that it would attempt to develop and demonstrate disparate treatment. Such testimony, if presented, may have been relevant since an integral part of the process leading to the Carrier's decision about the nature of the discipline to be imposed involves the matter of like treatment -- as much as such is possible -- for similar offenses. At the least, in the example cited, the Hearing Officer should have allowed the witness and the Organization to present testimony up to the point where a reasonable decision could be made as to its relevancy. The Organization correctly argues that this line of defense should be a part of the record. Certainly, the Organization should not use the hearing process as a forum to air grievances or other irrelevant discontents not germane to the case at hand and, it did not do so herein.

Accordingly, while the Carrier does control the hearing, in those instances where it prematurely forecloses the progression of testimony at a point before a reasonable decision as to its relevance can be made, a fatal error with respect to due process is found to exist.

The Board therefore concludes, without passing on the substantive matters surrounding this claim, that the Claimant was denied the fair and impartial trial to which he was entitled under the contract.

The claim is sustained to the extent that the fifteen (15) day suspension is rescinded and Claimant compensated for wages lost during the fifteen (15) days lost.

A W A R D

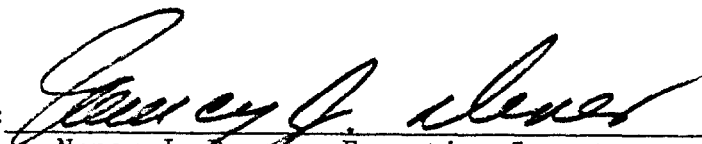
Claim sustained in accordance with the Findings.

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Award No. 9842
Docket No. 9911
2-SPT-SM-'84

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1984