

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  
( Southern Pacific Transportation Company

Dispute: Claim of Employes:

(1) That claimant Sheet Metal Worker C. G. Swain was arbitrarily and unjustly suspended from service on July 31, 1981 and subsequently dismissed on August 26, 1981 without sufficient cause, in violation of Rule 39 of the current Motive Power and Car Department Agreement.

(2) That claimant be restored to service with all seniority rights unimpaired.

(3) Compensate claimant for all time lost, in addition to an amount of 10% per annum compounded annually on the anniversary date of claim.

(4) Make claimant whole for all vacation rights.

(5) Pay premiums for hospital, surgical and medical benefits for all time claimant held out of service.

(6) Pay the premiums for Group Life Insurance for all time held out of service.

(7) Pay claimant for all holidays.

(8) Pay claimant for all sick pay.

(9) Pay claimant for all other contractual benefits for all time improperly held out of service.

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.

This dispute came about as a result of the Claimant's report of an injury to his thumb on July 27, 1981. The Carrier, after a hearing, dismissed the Claimant because it concluded that the thumb injury did not occur at the claimed time or in the manner described by the Claimant.

The Organization raises procedural questions with respect to the notice of hearing and the fairness of the hearing. In addition, it contends that the evidence of record does not support the Carrier's charge.

We have reviewed the record in its entirety and have found no procedural deficiencies that deprived the Claimant of his rights. He was aware of the subject of the investigation and was not prevented from presenting a full defense of his position.

With respect to the merits, there are divergent accounts of the incident and circumstances that led to this dispute. Carrier chose to place primary reliance upon the testimony of two witnesses, one of whom saw the incident which the Claimant states caused his injury, rather than that of the claimant. Therefore, under all of the circumstances of record, we find no justification to depart from the long-held principle of the Division not to substitute our judgement for those who have had a direct opportunity to evaluate the credibility of the witnesses and their evidence.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Leever - Executive Secretary

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