

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32 when they assessed Carman J. Smith's record with thirty (30) days deferred suspension following formal investigation held January 7, 1981.
2. That the Missouri Pacific Railroad Company be ordered to clear Carman J. Smith's record of the thirty (30) days deferred suspension and any and all correspondence relating to the charge and discipline.

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.

Claimant, Carman J. Smith, has been employed by the Carrier in the Houston, Texas, repair facility, known as Settegast Yard since approximately 1974. Following a personal injury sustained by the Claimant on September 5, 1980, Claimant received notice to report for a formal disciplinary investigation:

"To develop the facts and place the responsibility, if any, in connection with a personal injury you incurred on September 5, 1980, when you jumped off MPX Car 4653 thus violating Rule 126 of the Uniform Code of Safety Rules, and failed to report such injury to the proper supervisors thus violating Rule F of the Uniform Code of Safety Rules."

Safety Rule 126 states:

"Getting on or off engines, cars or other equipment by means other than steps, ladders and handholds provided for the purpose is prohibited."

Uniform Code of Safety Rule F reads as follows:

Employees must report promptly to their immediate supervisor all injuries, no matter how trivial. In every case of personal injury in any branch of the service, a full and complete report must be made at once on the prescribed form. They must obtain immediate first aid and medical attention for all injuries when necessary."

The investigation was scheduled for November 17, 1980, but was postponed at the request of the Organization until December 8, 1980. Following the investigation the Claimant received a 30-day deferred suspension for violating Rules F and 126.

The Organization's position is that the Carrier did not prove that Claimant jumped from Car MPX 4653. Furthermore, the Organization contends that the Claimant complied with Rule F because he informed General Foreman R. T. Wyatt of his injury at 9 a.m. on September 6, 1980, the morning following the injury. Mr. Wyatt testified that the Claimant informed him of the injury on September 6, 1980.

Additionally, the Organization contends that the assessment of discipline was arbitrary, unfair, and capricious in violation of Rule 32 of the controlling agreement. Rule 32 states:

"DISCIPLINE INVESTIGATIONS

(a) An employee covered by this agreement who has been in service more than 30 days, or whose application has been formally approved, shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad. He may, however, in proper cases, be held out of service pending such investigation which shall be promptly held ...

(d) If it is found that the charges against the employee are not sustained, the record of the employee shall be cleared of the discipline; if suspended or dismissed, the employee shall be reinstated to his former position, unless otherwise mutually agreed, and shall be compensated for the wage loss, if any suffered."

The Carrier's position is that the Claimant was proven by his own testimony to have violated Safety Rules F and 126 at a procedurally proper investigation. It is further the Carrier's position that the discipline assessed was not excessive. In fact, the Carrier argues that the discipline, which caused no lost time or lost wages, is preventative rather than punitive. The Carrier argues that such preventative discipline is necessary as violations of these safety rules could have potentially serious consequences to the employees and the Carrier.

Additionally, the Carrier contends that the investigation was not unreasonably delayed and that the Claimant was accorded all of the procedural rights of Rule 32. The Carrier argues that Rule 32 does not contain a time period within which investigations must be held. Furthermore, the Carrier points out that since the Organization requested postponement of the investigation, the Organization cannot now be heard to complain that the investigation was unreasonably delayed.

After reviewing the record, this Board finds that the Claimant was correctly charged with having violated the Uniform Code of Safety Rules F and 126. The Claimant testified that he was familiar with the safety rules regarding alighting from a freight car, and yet he admitted that he stepped down off the car without using the sill steps or handholds. When asked why he did not use the proper safety equipment to get off the car, he replied, "I guess I wasn't thinking at the time." Claimant thereby violated Rule 126.

The evidence clearly shows that the Claimant knew that he injured himself upon dismounting from the car and that he did not inform anyone of his injury until the next day. Claimant testified that he was aware of the requirement to report his injury immediately but that he did not report it on the day it occurred because "I thought it was nothing to myself." Thus, the Claimant was properly found to have violated Safety Rule F.

When an employe injures himself on the job and fails to report that injury immediately, the Carrier is placed in a precarious position. The employe has gone home without reporting his injury. The Carrier has no way of conclusively knowing whether the injury occurred on the job or off the job. This lack of knowledge could have serious legal ramifications.

Safety rules are made to protect both the employe and the Carrier. These rules must be enforced if they are to have any meaning.

The discipline assessed to the Claimant was not excessive. It cost him no lost time or wages and was imposed for the purpose of reminding him to follow the safety rules.

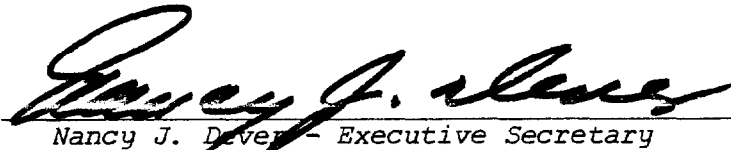
It is well established that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed. While the administration of disciplinary action should not seem haphazard or capricious, it is clear that the imposition of discipline is within managerial discretion. As there is substantial evidence that these violations were committed, this Board will not set aside the Carrier's disciplinary action. The Board further finds that the Claimant was accorded all rights due him under Rule 32.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984