

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement by assessing Carman Alex G. Mirando a fifteen (15) day deferred suspension on October 3, 1980, as a result of investigation held on September 5, 1980, at Conneaut, Ohio.
2. That the Norfolk and Western Railway Company be ordered to immediately remove and fifteen (15) day deferred suspension from the service record of Carman Alex G. Mirando.

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 involved in this dispute was a carman employed by the Carrier at Carrier's inspection and repair facilities at Conneaut, Ohio. He had apparently been a carman in the service of the Carrier since May 25, 1945.

On date of August 5, 1980 Carrier instructed Claimant to appear for investigation account allegedly "Being away from your assigned work location during your normal tour of duty at approximately 2:30 p.m. on August 2, 1980."

The investigation was held as scheduled and under date of October 3, 1980, Carrier notified Claimant that a 15 (fifteen) day deferred suspension was assessed against his service record. Under date of November 6, 1980, Carrier's Regional Medical Director H. H. Hopwood (since retired) notified Claimant that he was "disqualified from all service" effective November 12, 1980. Claimant then applied for and was awarded a disability annuity by the Railroad Retirement Board effective November 13, 1980. His last day of Carrier service was November 12, 1980.

During the course of the investigation Claimant's supervisor testified that he had found Claimant sitting at a bar at a place called the Olympic Village Restaurant at approximately 2:30 p.m., that he (the supervisor) motioned to the Claimant to come out to the truck, which Claimant did. Carrier's supervisor also testified that he spoke to Claimant, asked him why he was off company property, that he had been caught leaving the company property before, that he had been reprimanded and told that this would not be tolerated anymore.

Claimant in his testimony alleges that he had not left the company property at any time, that the supervisor had evidently mistaken him for someone else, apparently his brother. He produced several witnesses to corroborate his testimony.

The testimony of the Claimant and his witnesses is so contradictory to that of the Supervisor that it is rather evident that someone, either the Supervisor or the Claimant and his witnesses are not being completely candid in their testimony. While this Board does not normally resolve conflicts in testimony between witnesses we do however make the observation that it is difficult to believe that the Supervisor would not recognize a long time employe when he saw him and spoke to him at apparently very close proximity. It is equally difficult to believe that he would make up the whole story. In view of all of this, but without in any way ruling on the correctness or lack of same of anyone's testimony, we shall leave the findings of the investigation undisturbed, but also in view of the long time good record of the Claimant (38 years) and the fact that he is now retired and that the record suspension was never served, we find discipline assessed was excessive and that his record be cleared.

A W A R D

Claim Sustained in accord with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984