

The Second Division consisted of the regular members and in addition Referee Francis M. Mulligan when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. Sheet Metal Worker J. S. Smith unjustly discipline (sic).
2. Carrier be ordered to compensate ten (10) days at pro rata rate.
3. Compensate for any overtime lost between September 19-29, 1980.
4. Compensate for any jury duty pay Smith may be entitle (sic) to.
5. Ten (10) days suspension count for vacation qualifying time and any other contractual benefits he may have been entitle (sic) to.

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.

James S. Smith entered service with Seaboard Coast Line Railroad Company as a sheet metal worker in December of 1976. He has worked continuously for the Carrier since that date. Claimant at the time of the incidents worked at the Atlanta, Georgia facility. Claimant was cited for a full investigation on August 6, 1980. The trial was held on September 4, 1980. Claimant was cited for failure to follow instructions given to him by Foreman J. H. Robinson on July 9, 1980 and July 17, 1980 in connection with reporting to a physician to furnish medical information, failure to report for work on July 29, 1980 and reporting late for work on July 30, 1980. In addition, he was charged with violation of Rule 1 and a portion of Rule 12 relating to disloyalty, dishonesty, insubordination, willful neglect, making false statements or concealing facts in certain matters under investigation and Rule 26 of the Rules and Regulations of the Mechanical Department.

After a full review of the transcript, it would appear that the charges related to the alleged infractions on July 9, 1980 and July 17, 1980 were not sustained and the charges related to the July 29, 1980 and July 30, 1980 incidents would be a close call based upon the merits; however, after reviewing all of the procedural and due process irregularities claimed by the Organization, such as two (2) people conducting the hearing, charges overly broad regarding the dishonesty, etc. and the triple role played by the Master Mechanic as witness, judge and jury, the failure of the person who presented the charges to be present and the issue of unfairness in the proceedings regarding the restrictions placed on the Organization's representatives in asking questions while latitude was given to the Carrier's representatives, this case should be decided on the procedural issues. Actually, a fundamental due process issue is that a party should not have a multiplicity of roles in a proceeding in which a party is a witness and a judge at the same time. In effect, the judge is passing upon his own credibility. Fairness, under these circumstances, is difficult or nearly impossible to attain. In this case, Master Mechanic Dudley was the first witness on behalf of the Carrier and he presented significant testimony in the proceeding. The same Master Mechanic, by letter dated September 15, 1980 to J. S. Smith, was the person who notified Claimant in a two-page detailed letter that discipline was being imposed in his case. Actually, the letter, as indicated, is quite detailed passing upon the credibility of the Claimant's testimony as well as a warning regarding future conduct and its consequences.

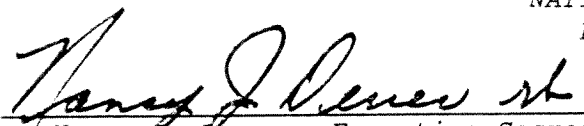
As was stated in the First Division Award No. 8259, "... [Where] an official expects to be used as a witness for the Carrier in one of these investigations, he should limit his activities to testifying. He should not participate in the investigation, either as an Examiner or in passing upon the question of fact under investigation. The position of witness with Examiner and judge are not compatible. Likewise, if an official unexpectedly is required as a witness for the Carrier, he should thereafter not further participate in the investigation, save as a witness." The function of the Board is to pass upon the regularity of the proceedings. The trial is under the control of the Carrier. The Board is not present to pass upon the credibility of the parties. However, regularity in the proceeding is a necessity when one party controls the investigation and issues the decision. There cannot be such a meshing of roles that the proceeding appears irregular on its face. Consistent with the reasoning cited above, the claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy G. Sever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.