

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

Parties to Dispute: (Sheet Metal Workers' International Association
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. The Norfolk and Western Railway Company violated the controlling agreement, particularly Rule 33, when they unjustly suspended from the service of the Carrier Sheet Metal Worker, D. L. Jordan for a period of 10 days beginning on March 13, 1982 through March 22, 1982.
2. That, accordingly, we request that the Norfolk and Western Railway Company be ordered to compensate Claimant for all time lost from March 13, 1982 to March 22, 1982 until restored to service and clear his record of any mention of this improper investigation.

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, D. L. Jordan, a Sheet Metal Worker at the time of the incident in question, was first employed by the Carrier on September 20, 1969. He was assigned to work in the Diesel Shop from 7 a.m. until 3 p.m., Wednesday through Sunday, at the Carrier's Decatur Shop in Decatur, Illinois, doing repair work on locomotives and cars.

On January 8, 1982, Claimant was notified to attend a formal investigation for the purpose of determining his responsibility in connection with being absent from his assigned job on December 17, 1981, from 11:20 a.m. until 12:05 p.m. As a result of said hearing, Claimant was found guilty of the charges and was assessed a ten-day suspension.

The Organization contends that Claimant was not provided a fair hearing in compliance with Rule 33. Rule 33 states:

"No employee shall be disciplined without a fair hearing by designated officer of the Railroad. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The Organization argues that the hearing officer had prejudged the Claimant, and the Carrier's charges against the Claimant were never proven; and, consequently, the Carrier did not meet the burden of proof.

Finally, the Organization argues that since the transcript is devoid of any evidence, there is no justification for the discipline imposed; and the claim should be sustained.

The Carrier argues that at approximately 10 a.m. on December 17, 1981, Claimant was instructed by Assistant Foreman D. E. Fozzard to "Unit 2479 to do pipe work as needed, as it was there for wreck damage". The Carrier contends that no work was completed between 10 and 11 a.m. that morning and that the lunch period in the Diesel shop is from 11 to 11:20 a.m. At 11:30 a.m., General Foreman Vern Havice discovered that the pipe work in Unit 2479 had not been performed, and no one could find Claimant until he showed up at the Diesel Shop office at 12 noon.

The Carrier contends that Rule 33 of the current agreement was complied with in that the Claimant was afforded a fair and impartial investigation.

Carrier contends that Claimant was found guilty of the infraction with which he was charged. Moreover, Carrier argues, the penalty assessed was commensurate with the offense.

The Board has reviewed all of the evidence and finds that Rule 33 was fully complied with and Claimant was afforded a fair and impartial hearing. He was timely notified of the charges against him, he was well represented by his Organization at the hearing, he was allowed to call witnesses and present testimony on his behalf, and he was able to cross-examine the Carrier witnesses.

This Board also finds that the hearing officer was justified in finding that Claimant was wrongfully away from his work area on December 17, 1981, and he had no good explanation for not being in his proper place and performing work between 11:20 a.m. and 12:05 p.m. on that date. There was credible testimony of three competent witnesses that Claimant was absent from his assigned job.

Form 1
Page 3

Award No. 10170
Docket No. 10250
2-N&W-SM-'84

It has long been held that this Board is not constituted to weigh questions of credibility and to substitute its own judgment, unless, of course, there is no basis for such a finding. Here, there is adequate basis for upholding the credibility of determination.


This Board also finds that based on the wrongful acts of the Claimant and his past work record, the ten-day suspension imposed on him was not excessive. It is a well-established principle of this Board that the evaluation of the facts in discharge cases is the responsibility of the Carrier's officers who conduct the hearing and the investigation. Our function is to examine the record, make sure that the Claimant was afforded a fair and impartial hearing under the terms of the agreement, and that there was no predetermined bias or prejudice against the Claimant; that there was no abuse of discretion in the imposition of the penalty, and that the punishment fits the crime; i.e., that the discipline was not arbitrary, unreasonable, or excessive. It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carrier's in disciplinary matters unless the Carrier's action be so arbitrary, capricious, or fraught with bad faith as to amount to an abuse of discretion. We have reviewed the discipline imposed in this case, and we do not find that it violates any of those principles.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 5th day of December 1984.