

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

(International Brotherhood of Firemen and Oilers
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Laborer J. F. Beckham, I. D. No. 174684, was unjustly suspended from service of the Seaboard System Railroad on April 10, 1983 through June 11, 1983, after a formal investigation was conducted in the office of Asst. Master Mechanic F. E. Byrd on April 22, 1983.

2. That accordingly Laborer J. F. Beckham be compensated for all lost time, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid effective April 10, 1983 through June 11, 1983, and the payment of 10% interest rate be added thereto.

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 was a laborer employed at the Carrier's diesel locomotive repair facility in Atlanta, Georgia. Shortly after 11:00 p.m. on April 10, 1983, an incident occurred which resulted in a notice dated April 12, 1983, directing Claimant to appear for investigation on April 22, 1983. The notice charged the Claimant with refusal to obey instruction from his Supervisor, and provided in pertinent part:

You are being charged with being in violation of that part of Rule 12 of the Seaboard Coast Line Company Rules and Regulations of the Mechanical Department that states: "vicious and uncivil conduct, insubordination, incompetence, willful neglect will subject the offender to summary dismissal."

As a result of the investigation, Claimant was suspended for forty-five (45) days.

The record shows that on April 10, 1983, the Claimant was instructed by the Assistant Departmental Foreman to drive the cab track truck in order to service engines and a cab on a departure track. The Assistant Foreman testified that the Claimant replied that he [Claimant] would have to "check the cab truck out" before deciding whether to drive the vehicle. The Assistant Foreman testified that Claimant refused to drive the cab truck due to the absence of back-up and brake lights. The Assistant Foreman stated he then instructed Claimant to drive the rerail truck, but that Claimant declined to do so because the rerail truck was a larger vehicle than the cab track truck, and he was not used to operating it.

The Assistant Foreman immediately secured the attendance of two witnesses including a Shop Foreman, and again requested the Claimant to drive the cab track truck. The Claimant agreed to drive the rerail truck, but declined to be responsible for the truck. When the Claimant did agree to drive the rerail truck it was no longer available for use by the Claimant. The Claimant refused once again to drive the cab track truck, and was immediately removed from service.

The Organization argues that the Claimant properly checked the cab track truck, and located defects which precluded his use of the vehicle in accordance with Rules 475 and 25.

Rule 475 states:

"Operators must see that the machines are properly serviced, supplied, serviced and ready for immediate use. Before using, it must be examined as to fuel, oil, tires, rear view mirrors, windshield wipers, lights, horn, brakes, steering, etc. and defects repaired or reported to supervisor."

Unauthorized repairs or adjustments are not permitted. Defective machines must not be used."

Rule 25 provides:

"Employees of every grade are warned to see for themselves before using them, that the machinery or tools which are expected to use are in proper condition for service required; and if not, to put them in proper condition or see that they are so put before using them. The Company does not wish nor expect its employees to incur any risks whatever from which, by exercise of their own judgement and by personal care, they can protect themselves, but enjoins them to take precaution in all cases to do their duty in safety, whether they may at the time be acting under orders of their superiors or otherwise."

The Carrier's Departmental Foreman in charge of maintenance of equipment testified that his inspection on the morning of April 11, 1983, confirmed the absence of stop lights, back up lights and a right turn signal. The Carrier argues that despite these defects the vehicle was safe, in particular due to the fact that Claimant's travel for cab service was restricted to the Carrier's private, well-lighted and rarely traveled service road. The Claimant testified that in the course and scope of his duties on April 10, 1983, he would have had to drive the cab track truck on the public highways of the State of Georgia in its present condition in violation of State law. Carrier's Charging Officer, without denying that operation of the cab track truck on a state, county or municipal street would have been in violation of State law, testified upon cross-examination by Claimant as follows:

"Q. Before the end of my eight-hour shift, would I have had to go off of the Company property on a City street?

A. I'll say I wouldn't have sent you off.

Q. I didn't ask if I would have been sent off, I asked if I would have been in a position where I would have had to go off the company property to service a cab or locomotive?

A. I have no way of knowing."

This Board finds that the Claimant's declination to use the cab track truck based upon safety considerations was substantiated by the record. The testimony of the Charging Officer who was in a position to know the extent of Claimant's duties does not constitute a denial Claimant may have been sent off of Carrier's property in a truck which violated State law.

A careful review of the record, however, indicates that the Claimant was without justification in his refusal to drive the rerrail truck. The testimony of Claimant and the Carrier's General Foreman were in direct conflict as to whether Claimant had been instructed not to drive the Carrier's vehicles because of prior accidents involving the Claimant. Carrier's Assistant Departmental Foreman testified that the General Car Foreman had expressed a preference that the Claimant not drive the Carrier's trucks if at all possible. This Board cannot state upon review of the entire record that the Hearing Officer in this case improperly assessed the credibility and weight of the witnesses. The Claimant was offered the chance to operate a safe vehicle during the performance and within the scope of his duties, but refused.

The Board finds that Claimant declined to operate the rerrail truck without justification. Claimant's act of refusal must be judged, however, in light of a ten-day suspension he received only thirty days earlier which involved operation of a Carrier vehicle, and safety as a basis for his refusal to operate the cab track truck. The Board is of the opinion that the assessed

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discipline was excessive and unreasonable. Claimant's suspension is hereby ordered reduced to thirty days. Claimant shall be compensated for the difference between the amount he earned while suspended in excess of the thirty days from Carrier's service, and the amount he would have received based upon his usual assigned working hours during the same period. Claimant's personal record shall be so noted.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1985.