

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
(
(The Houston Belt and Terminal Railway Company

Dispute: Claim of Employes:

1 That the Houston Belt and Terminal Railroad Company violated Rules 22, 27 and 29 of the controlling Agreement when they arbitrarily and without merit, assessed Carman L. G. Hughes with thirty (30) days actual suspension.

2. That the Houston Belt and Terminal Railroad Company be ordered to compensate Carman L. G. Hughes for all wage loss during the period of his suspension including loss of overtime and holiday wages, if any, and vacation rights. In addition to the money amounts claimed herein that he be allowed 10% interest compounded annually on the anniversary date of claim.

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 were given due notice of hearing thereon.

The Claimant involved in this dispute is a Carman employed by the Houston Belt and Terminal Railroad Company at Houston, Texas. On date of September 24, 1984, Claimant was directed by Carrier to report for formal investigation at the office of the Master Mechanic at Houston, Texas, to "develop facts and place responsibility, if any,..." allegedly "for refusal to drive 316 pickup truck and failure to comply with oral and written instructions to wear a hard hat or bump cap." Claimant was also advised that he was being withheld from service pending the outcome of the investigation. The investigation was held on date of September 24, 1981, and on date of October 5, 1984, Claimant was advised that he had been assessed with a thirty (30) day suspension.

The Claimant has been charged with:

1. Refusal to drive a pickup truck.
2. Not complying with order to wear a hard hat or bump cap.

The Employes contend that:

1. The truck was unsafe to drive, and:
2. Wearing hard hats or bump caps was not uniformly enforced, on this property.

In regards to the Employes first contention transcript testimony at the investigation shows that the truck apparently had the following defects:

1. Horn not working.
2. Loose or disconnected spark plug wires.
3. Right hand door needed replacing.
4. Defective carburetor.
5. Fumes coming through a hole in the floor boards.
6. Windshield cracked.
7. Right rear fender not properly attached.
8. Oil leaks either from the motor or transmission.
9. Defective wiper blades.
10. Would not stay in park.

We note also that one day after the incident over which this incident arose, the truck was sent in for repairs. While this Board is always very reluctant to ever agree that an Employe can disobey orders, we feel that in view of the condition of this truck, we cannot hold him at fault over this particular incident. However, his failure, after apparently repeated warning, to wear the hard hat or bump cap, could have resulted in very severe, even fatal injuries to himself and for which the Carrier would, in all likelihood, have been held liable; we cannot condone this type of chance taking. The fact that the rule may have been rather laxly enforced is not an excuse. We do not feel that a thirty (30) day suspension in this case is excessive. We must deny the claim.

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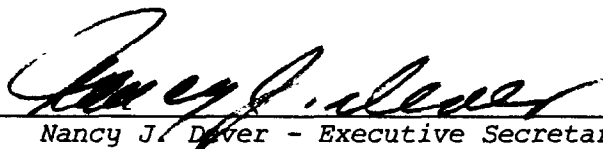
Award No. 10587
Docket No. 9848
2-HB&T-CM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1985.