

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the U.S. and Canada
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the Agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada when Carman D. W. Estes was unjustly suspended for ten (10) days commencing June 7, 1982.

2. The the Missouri-Kansas-Texas Railroad Company be required to make D. W. Estes whole by rescinding the suspension and that Carman D. W. Estes be paid his pro rata rate of hourly pay for eight (8) hours per day for each day that he was deprived account of suspension. That the daily wage be credited to a daily rate and that Carman Estes be made whole for vacation credits, railroad retirement benefits and all other contractural benefits not specifically mentioned.

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. W. Estes was notified on May 21, 1982 to attend an investigation to determine his possible responsibility in failing "to comply with written instructions issued...to bad order Caboose MKT 120 to the repair track for repairs to truck bolsters". He was charged with being "negligent". The formal investigation was held on May 27, 1982, and the Claimant was notified on June 2, 1982 that he had been found guilty as charged and was to serve a ten (10) day actual suspension.

This Board notes in preliminary fashion that all arguments, lines of reasoning and issues considered ex parte and not handled in the usual manner on property are inadmissible and may not now be considered. In addition this Board has carefully reviewed all the allegations that were raised on property concerning "an unfair hearing". This Board finds no Agreement contravention in the case at bar that denied the Claimant his contractual rights and as such must turn to the merits of the case.

In the circumstances of the instant case the following is not a matter of dispute between the parties. Written instructions had been issued on May 12, 1982 to bad order Caboose MKT 120 to the repair track by Assistant Car Foreman Jaynes which was in the Yard book. A notice also appeared on the blackboard to bad order Caboose MKT 120 signed by Superintendent Cars and Locomotives, Mr. D. C. Joseph. Claimant was aware of the bad order Caboose on the train when it arrived on the morning of May 15, 1982. The Caboose was inspected by Claimant and was not bad ordered as per the written instructions, but allowed to proceed.

In support of the Claimant the Organization maintained on property that the Claimant "performed his duties exactly as required"; that the "Yardmaster clearly required Carman Estes to leave Caboose 120 on the train" and that "the Supervisor was notified". During the investigation the Claimant stated that the Yardmaster was his immediate Supervisor and the Organization pointed to a 1981 case in support of that assertion.

The Carrier maintained that the charge was clearly made and supported that the Claimant failed to comply with written instructions and was therefore negligent. Those instructions did not come from the Yardmaster, but from Carrier Officials not on the property at the time. Assistant Vice-President-Mechanical maintains that the Claimant was aware of and ignored proper instructions and that given his guilt the discipline assessed was "very lenient".

After careful consideration of the record, this Board concludes that there is sufficient probative evidence to substantiate the Carrier's position that the Claimant was negligent in not bad ordering the Caboose. The record of the investigation documents that the Claimant understood clearly the instructions from both the Assistant Car Foreman and the Superintendent Cars and Locomotives and in failing to follow those orders was guilty as charged. Even if the Claimant believed the Yardmaster was his Supervisor, as such unrefuted testimony stands in the record, he did not testify that the Yardmaster ever ordered the train to proceed with the bad ordered Caboose.

The testimony of the Claimant indicates that the Yardmaster may have strongly desired that outcome even to the point of suggesting a wire would be sent, but not to the point of instructing and ordering the Claimant to ignore written instructions to bad order the Caboose. In fact, this Board has searched the record carefully to determine the degree to which the Claimant attempted to comply with written instructions or to make those instructions of paramount importance in his actions. We find that he did little more than note the bad order to the Yardmaster. Even if the Yardmaster erred in suggesting the Caboose go through, this would not remove Claimant's responsibility for following written instructions (See Second Division Awards 8075, 6538, 4358).

This Board finds that the Carrier has met the burden of proof in the case at bar and that there is no reason to consider the discipline as excessive given the potential seriousness of the action and the consequences to life and property that could have occurred. As such, this Board will not disturb Carrier action in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deter - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985