

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

(Brotherhood of Railway Carmen of the United States
(and Canada
Parties to Dispute: (Southern Railway Company

Dispute: Claim of Employees:

1. That Carman R. P. Scholl, Columbia, South Carolina, was unjustly suspended from service for a period of thirty (30) days, November 28, 1982 through December 27, 1982.
2. That accordingly, the Southern Railway Company be ordered to compensate Carman R. P. Scholl for pay lost during this thirty (30) calendar day suspension.

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, R. P. Scholl, a Carman in the Carrier, South Carolina Car Department in service since January 30, 1982 was given a 15 day actual suspension as a result of an initial investigation held on November 9, 1982. As a result of a formal investigation held on November 8, 1982, the penalty was increased to 30 day actual suspension. The Claimant was charged with malicious and willful destruction of company property and conduct unbecoming to an employee. Specifically, he was charged with what is commonly called "horseplay" in that he allegedly placed oil in another employee's hardhat, thereby ruining the hardhat, which was Carrier's property and also hid that same employee's tools.

The Organization argued that the Carrier had violated Rule 34 in that the Carrier had no proof that the Claimant actually was responsible for the incidents in question. The Organization stated that the testimony at the hearing was inconclusive and inconsistent and notes that, even though the charges were not proven, the penalty was not decreased but increased. The

Organization stated that the Carrier is trying to discourage requests for formal investigation and, while it recognizes that penalties may be increased as a result of such investigation, under the circumstances employees will be discouraged from exercising their rights under the contract.

The Carrier argued that the Claimant at the preliminary investigation admitted that he had placed the oil in the other employee's hardhat, although he did claim it was an accident. The Carrier noted that, because of the position of the hardhat, an accidental placing of oil in the hat would have been difficult if not impossible. They also noted that, when asked about the tools, the Claimant was able to find the tools within a few minutes in a two mile square area late at night, even though others had searched for the tools without success. The Carrier argued the penalty was proper and asked the Board to uphold it in full.

The Board would like to say at the outset that it has very little patience with horseplay incidents, not that they in and of themselves normally create much harm to the Carrier or the Carrier's employees, but these incidents typically escalate to the point where substantial damage or injury occurs. The Board notes that most of the evidence presented was circumstantial in nature, however, it believes after a complete review of the record the Claimant to be guilty of placing oil in another employee's hardhat, which renders that piece of Carrier property unfit for service. However, with respect to the charge of hiding an employee's tools, the Carrier has not sustained its burden of proof. Just because the Claimant was able to find the tools does not necessarily mean that he was the one that hid them in the first place. In discipline cases the Carrier has an obligation to show by positive evidence that employees are guilty as charged. Therefore, the Board will order the penalty in this case reduced from 30 calendar days to 10 working days, and the Claimant is admonished not to engage in horseplay activities in the future.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.