

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and
(Canada
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current Agreement Carman W. E. Passmore was improperly suspended from service September 23, 1982 to October 20, 1982.
2. That the Seaboard System Railroad Company was procedurally defective in that they disciplined Carman Passmore by removing him from service before an investigation was held.
3. That accordingly, the Seaboard System Railroad Company be ordered to pay Carman W. E. Passmore for all time lost from September 23, 1982 to October 20, 1982, and that he he (sic) receive all other benefits he would have accrued under a normal flow of circumstance as if he had never been suspended, and that all mention of this incident be removed from his personal record.

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.

The Claimant, W. E. Passmore, is employed by the Carrier, the Seaboard System Railroad Company, at Winston, Florida. On September 23, 1982, the Claimant was suspended from service and charged with insubordination as a result of an incident that occurred on that day. On September 30, 1982, a formal investigation of the insubordination charge was held; as a result, the Claimant received a 20-day suspension effective September 23, 1982, through October 20, 1982. The Organization subsequently filed a claim on the Claimant's behalf.

The Organization contends that the Claimant was unjustly disciplined and that the Carrier violated Rules 32, 33, and Appendix Q of the controlling Agreement. These portions of the Agreement provide, in part:

"Rule 32 - Discipline Hearings

No employee shall be disciplined without a fair hearing by a designated officer of the Company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. 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 lost, if any, resulting from said suspension or dismissal."

"Rule 33 - Representation

The Company will not discriminate against any employees who from time to time represent other employees."

"Appendix Q

The Organization, with the cooperation of the local management, will keep record of all overtime worked, and when it is necessary to call or notify employees for overtime the distribution of overtime will be handled through mutual agreement between the local committee and the local supervisor."

Specifically, the Organization contends that the Carrier's handling of this matter was procedurally defective. This was not a proper case for suspension pending a hearing: the Claimant was given an order that he could not follow; he was not allowed to contact his Local Chairman for necessary information; the alleged offense was not serious; and the Claimant was no threat to himself, other employees, the Carrier, or the Carrier's property.

The Organization further asserts that the Claimant was suspended from service without notice that it was pending a hearing. After the subsequent investigation, the Claimant received a 20-day suspension although the investigation established that he was innocent of insubordination.

The Organization argues that it was impossible for the Claimant to carry out the order that underlies this dispute, and that his Supervisor knew this. Further, if the Supervisor had not unreasonably refused to allow the Claimant to contact his Local Chairman, the Local Chairman could have supplied a copy of the missing list that the Supervisor was seeking from the Claimant. The Carrier therefore wrongly charged the Claimant with insubordination and unjustly suspended him.

In addition, the Organization contends that the Claimant was fulfilling his duty of maintaining overtime records, pursuant to Rule 33 and Appendix Q, at the time that this dispute occurred. The overtime list disappeared from the lunchroom, where the Claimant left it to respond to an order from his Supervisor; all of the shop personnel have access to the lunchroom, so anyone could have taken the list. Also, any hostility that the Carrier may have harbored toward the Organization because of a strike settled just before this incident does not justify the discipline assessed against the Claimant, an Organization Representative.

Finally, the Organization contends that because the Carrier has not met its burden of proof, the claim should be sustained; the Claimant's record shall be cleared of all references to this dispute, and he should be made whole for all losses that he suffered as a result of this matter.

The Carrier contends that the record establishes that the Claimant was insubordinate in failing to follow his Supervisor's orders regarding the overtime list. The testimony proved that the Claimant took the list, and that his Supervisor ordered him to return it. Further, the Claimant should not have left the list in the lunchroom when he responded to his Supervisor's instructions. Finally, the Claimant did not follow his Supervisor's order to return the list. The Carrier asserts, therefore, that the assessed discipline was lenient.

Finally, the Carrier contends that the discipline was neither arbitrary nor capricious, but justified by the Claimant's conduct. The claim is without merit, asserts the Carrier, and should be denied in its entirety.

This Board has reviewed all of the evidence and testimony in this case, and it finds that the Claimant was afforded all of his procedural rights during the hearing process. Although the Organization argues that the Carrier wrongfully held the Claimant out of service pending a hearing, it is well established that insubordinate behavior is one of the "proper cases" that justifies a Carrier suspending an employee pending a hearing. (See Second Division Award 7150.) As we held in Second Division Award 5360, the Claimant had shown himself to be antagonistic to his Supervisors, and therefore the Carrier had the option, in this type of "proper case," to remove the Claimant pending the hearing.

This Board has reviewed the hearing process, and we find that the Claimant and the Organization were allowed to confront the witnesses against the Claimant and to argue the Claimant's case with all of his rights protected. At the end of the hearing, the Claimant even admitted that he had the opportunity to cross-examine witnesses and to present witnesses on his own behalf.

With respect to the merits of the substantive dispute, there is sufficient evidence in the record that the Claimant was insubordinate when he removed the overtime list and failed to either retain it or at least furnish a copy of it to his Supervisors. Hence, the Carrier had a right to impose discipline on the Claimant.

This Board does not second-guess the amount of discipline issued a Claimant by a Carrier unless that action is unreasonable, arbitrary, or capricious. In this case, a 20-day suspension is clearly excessive given the nature of the infraction and the Claimant's prior work history. Hence, this Board hereby reduces the discipline to a 10-day suspension and orders that the Claimant be made whole for the lost time and that his personnel record be amended accordingly.

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 8th day of January 1986.