

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

(International Association of Machinists and Aerospace
Workers)

Parties to Dispute: (

(New Orleans Public Belt Railroad Company

Dispute: Claim of Employees:

1. That the New Orleans Public Belt Railroad Company violated the provisions of the applicable June 20, 1977 Agreement, when it suspended Machinist Local Chairman A. M. Ranson from the service for five (5) working days during the period February 20 through 24, 1984, account he allegedly contributed to the disappearance of the Engine Pit No. 2 Board from the Company's property.

2. That the New Orleans Public Belt Railroad Company be required to compensate Machinist Local Chairman A. M. Ranson for all wages lost account of his five days suspension from the service and, in addition thereto, clear his record of all reference to the Company's charges of January 5, 1984, the investigation conducted January 24, 1984, and his subsequent letter of discipline dated February 8, 1984.

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, Machinist A. M. Ranson, has been employed by the Carrier, New Orleans Public Belt Railroad, in New Orleans, Louisiana, for over four and one-half years. On January 24, 1984, a formal investigation was held to determine the extent, if any, of the Claimant's responsibility in the disappearance of the board that was used across Engine Pit No. 2 at the Carrier's Tchoupitoulas Street roundhouse, which allegedly was involved in the personal injury to another employee.

As a result of the investigation, the Claimant was assessed a five-day suspension. The Organization subsequently filed a Claim on the Claimant's behalf.

The Organization contends that the Carrier violated Rule 28 of the Controlling Agreement because it arbitrarily and unjustly suspended the Claimant. Rule 28 provides:

"No employee shall be disciplined without a fair hearing by the Carrier . . . At a reasonable time prior to the hearing, such employee and the duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. 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 loss, if any, resulting from said suspension or dismissal."

The Organization specifically argues that the Carrier failed to meet its burden of proof in charging that the Claimant was wholly or partly responsible for the pit board's disappearance.

The Organization points out that the Carrier knew the board was missing in August 1982, but did not investigate its disappearance until January 1984, seventeen months later. This is a violation of Rule 28's provision that prompt hearings must be held.

The Organization further asserts that during the investigation, the Hearing Officer repeatedly stated that the sole purpose of the hearing was to determine the location of the board. The record establishes that no one at the hearing knew where the board was located, or anything about its disappearance. Testimony at the hearing established that shortly after the accident, the board was placed in the same area as other pieces of scrap lumber, and it was indistinguishable from this other lumber. No evidence was introduced at the hearing that indicated that the Claimant was involved in the board's disappearance.

The Organization argues that the Claimant put aside for safekeeping a board that he thought was the one involved in the injury; he did this because the Foreman had ordered another employee to cut up all of the pit boards, and the Claimant was trying to prevent the board from being destroyed. The board that the Claimant put aside was never identified as the missing, unmarked board. Also, contrary to the Notice of Suspension, there was no evidence that the Claimant removed the missing board from behind the cabinet where it originally was placed.

The Organization therefore contends that the Claimant's suspension was an abuse of managerial authority, and that the record establishes that the Claimant is innocent of any wrongdoing. The Organization asserts that the Claim should be allowed, and the Claimant should receive five days' pay and his record cleared of all reference to the incident.

The Carrier contends that the Claimant admitted moving a board from where the board for Engine Pit No. 2 had been placed for safekeeping. The Claimant's negligent tampering with the board, moving it next to a scrap lumber area, caused it to disappear. If the Claimant had replaced the board to its original location, it would not have disappeared.

The Carrier further asserts that the board was very important to its defense in the suit arising out of the employee's injury. All of the employees in the roundhouse, including Claimant, knew of the board's importance, and employees have a duty to protect company property. Due to the seriousness of the offense, the Carrier claims that the discipline was lenient. The Carrier therefore contends that the Claim should be denied.

This Board has reviewed all of the evidence and testimony in this case, and we find that there is insufficient evidence to find the Claimant guilty of any wrongdoing, and therefore the Claim must be sustained, and the five-day suspension of the Claimant must be rescinded.

The Organization is correct in its assertion that the Carrier has failed to meet its necessary burden of proof that the Claimant was guilty of being responsible, in whole or in part, for the disappearance of the pit board allegedly involved in another employee's injury in August, 1982. None of the witnesses at the Hearing was able to establish that the Claimant had removed the board from the Carrier's property or destroyed it. Even the Carrier's attempt to assert negligence on the part of the Claimant for leaving the board in a place where it might be viewed as scrap failed since the Claimant made it clear that when he did move it to another place, he did so in an effort to save it from being destroyed. Unfortunately, through no fault of the Claimant, the board was very plain and very similar to the dozens of other boards used by the employees in the shop. Consequently, there are many different explanations for the board's disappearance and no evidence at the hearing to sufficiently tie its disappearance to the Claimant.

Although this Board is usually reluctant to set aside the findings of a Hearing Officer, in this case there was simply insufficient evidence to support a finding of guilty against the Claimant. Hence, the imposition of disciplinary action against the Claimant must be set aside.

Accordingly, Claim is sustained and the five-day suspension against the Claimant is hereby set aside and the Claimant is to be made whole for all lost earnings at his straight-time rate of pay.

Form 1
Page 4

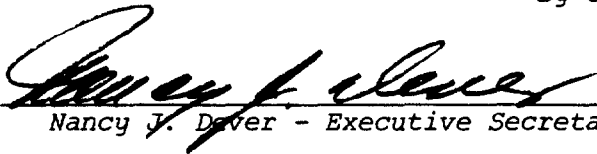
Award No. 10703
Docket No. 10740
2-NOPB-MA-'85

A W A R D

Claim sustained.

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.