

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(International Brotherhood of Firemen and Oilers  
Parties to Dispute: (  
(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant Gary C. Redden, I. D. No. 316030 was unjustly suspended from service of the Seaboard System Railroad Company on December 19, 1982 thru January 8, 1983, both dates inclusive, after a formal investigation was held in the office of Mr. D. A. Lawson, Master Mechanic and Conducting Officer, on December 16, 1982.

2. That accordingly, Service Attendant Gary C. Redden be compensated the fifteen (15) days discipline assessed December 19, 1982 thru January 8, 1983, both dates inclusive, at the pro rata rate of pay.

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 was a Service Attendant in the service of Carrier on November 11, 1982, when his conduct on that date led to an Investigation in which he was charged with:

"You are charged with conduct unbecoming an employee in that at approximately 3:15 P.M., ... you argued and carried out the instructions in laggardly manner."

Based on the evidence adduced at the Investigation, the Investigating Officer found that the charges had been proven and suspended Claimant for a period of fifteen working days.

On the day in question Claimant was working the second trick. He was instructed by his Supervisor to go to clean the sand out of the west pit. He argued with the Supervisor about the work assignment, stating that it was the function of the second shift to clean that pit. Sometime later the Supervisor noticed that Claimant was in the east pit where he had been when the instruction was given. Once again the Supervisor repeated the instruction. Again the Claimant argued with her and stated that it was the job of the second shift to clean the pit. The Supervisor reminded him that he was working second shift.

About thirty minutes later the Supervisor observed that Claimant had only cleared one foot of sand from the pit. She observed that he was working with a four inch shovel. He was instructed to get a larger shovel and to pick up three piles of sand which had been shoveled by another employee. Later she noticed that Claimant had only moved two piles of the sand and that he was only loading the shovel to one quarter or one half capacity. When questioned about this, he stated that he was shoveling all the sand that he believed to be safe to his health. Based upon this poor attitude and performance, the charges were brought.

Claimant's defense was a general denial of not cooperating. He stated that he had a bad back and that he had to be careful about weight in the shovel. Claimant blamed the whole incident on a failure of communication.

Claimant was not charged with the serious offense of insubordination. What he was charged with and found to have been guilty of was the equivalent of a slowdown strike. The Investigating Officer obviously believed that Claimant objected to the orders of the Supervisor and utilized this method to express this displeasure.

The outcome of this investigation must necessarily turn on the finding of credibility of the witnesses. Normally this finding is left to the Investigating Officer. An Appellate Board cannot overturn his findings unless there is evidence in the record that clearly contradicts his findings or evidence that demonstrates that Claimant was denied a fair and impartial investigation.

There is nothing in the record to impeach the findings of the Investigating Officer. However, two points are raised by the Organization to prove that he was denied a fair and impartial investigation. One is that the Local Chairman was not able to be present to represent Claimant. The record demonstrates that the Carrier was proceeding to postpone the investigation until the Local Chairman could be present, but Claimant insisted that it proceed as planned. He had secured representation from another person.

The second point is that the Investigating Officer made objections and directed witnesses to not answer questions to the detriment of Claimant's defense. The Investigating Officer refused to get into the performance of other employees and to let the Supervisor speculate on what she would have done in hypothetical situations. The Investigating Officer has a difficult job. He must decide when the questions are not relevant to the specifics of the investigation and balance this against the rights of the investigatee. We

find that the line of questioning which he shut down was deviating unnecessarily from the focus of the Investigation and was properly stopped. We do not find that the Claimant was denied a fair and impartial Investigation.

Claimant's past disciplinary record, if any, was not made a factor in the assessment of the degree of discipline. In its submission to this Board the Carrier cites a portion of Award No. 205 of Public Law Board No. 2143 which states:

"Insubordination is not confined to cases where an employee unequivocally refuses to obey a direct order. Insubordination is a state of mind which may be deviously displayed as was here the case."


We heartedly concur with the pronouncement of that Board. However, it has no relevance here. It is only indicative of the fact that the Carrier was treating this discipline as a matter of insubordination.

The Claimant was not charged with insubordination. The charges state that he carried out the instructions, the exact opposite of insubordination. He was charged with carrying them out in a laggardly manner. We find that fifteen days of suspension is excessive. The objective of discipline is to teach the recipient that conduct of the type cannot be repeated in the future. We deem it unnecessary to assess half a month's pay to convince Claimant to carry out his duties in an acceptable manner. We will reduce the suspension to five working days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 5th day of March 1986.