

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it unjustly and unfairly suspended Electrician M. J. Chevre from service for thirty (30) days on April 23, 1984.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Electrician M. J. Chevre for all lost wages (including 18% A.P.R. interest thereon) and benefits, and clearing his 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, an Electrician with the Carrier, was suspended for thirty days as a result of an Investigation held on April 4, 1984. The Claimant was charged with failure to properly perform his duties in that he started Locomotive #460 while Locomotive #475 was hooked to it. As a result, the Locomotive ran into the Roundhouse door causing substantial damage to the Carrier's property.

The Organization argued the Carrier is procedurally defective in this case in that the Carrier did not notify the General Chairman within five days as is required in Rule 35, (n). The Organization states Rule 35, (t) requires the charges to be dismissed if proper notice is not given to the General Chairman, and Rule 36 requires a Claimant to be reinstated and paid for actual loss in wages if he has been found to be unjustly disciplined. In addition, the Organization argued that there was no proof that the Claimant was at fault as the Claimant was not responsible for bringing the Locomotives into the Roundhouse. The Locomotives had been left in an unsafe condition, and therefore the fault should be with the Hostler or the Foreman. The Organization notes the Claimant has a good work record.

The Carrier admitted that it did not properly notify the General Chairman in this matter. However, it argued that this was not objected to at the Hearing and the Organization did not request any postponements. With respect to the merits of the case, the Carrier argued the Claimant had admitted his action was unsafe. It is the Claimant's responsibility to check the status of equipment before performing work. The Carrier states the accident could have been much worse, and perhaps injuries could have resulted. Since the Claimant engaged in unsafe activity, the thirty day suspension was an appropriate penalty under the circumstances. The Carrier also claimed that the Organization violated the Rules in that it failed to notify the Carrier in a timely manner of its rejection of the decision of the Carrier's Assistant Vice President of Labor Relations on August 24, 1984. Finally, the Carrier noted that in a similar case on the same property a Public Law Board Referee found a thirty day disciplinary suspension to be an appropriate penalty.

Upon complete review of the evidence presented, the Board finds the Carrier has violated Rule 35 of the Agreement. That Rule clearly states that the Carrier must inform the General Chairman at least five days prior to the Investigation. The Carrier has admitted that it did not comply with this Rule. Regarding the threshold issue raised by the Carrier, if in fact this is correct, it did occur after the Rule violation by the Carrier. The Claimant should consider himself very fortunate in that, it is clear from the record of this case, he did perform his job in an unsafe manner. While the Board is going to sustain this Claim, the Board is specifically admonishing this Claimant to perform his duties in a safe manner in the future. The Board orders the Carrier to compensate the Claimant for time lost in accordance with Rule 36. Requests for interest and benefits are specifically denied.

A W A R D

Claim is 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 19th day of March 1986.