

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. Under the current Agreement, Mechanical Department Electrician A. C. Vassallo was unjustly disciplined when he was suspended from service for a period of thirty (30) days commencing April 22, 1983 through May 31, 1983, following investigation of the alleged violation of portions of Rule 801 and Rule 802 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on April 22, 1983.

2. Accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to compensate Electrician A. C. Vassallo for all time lost during the thirty (30) day suspension with interest at the rate of ten percent per annum.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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, A. C. Vassallo, a Lead Electrician with the Carrier and in service since May 23, 1974, was given a 30-day actual suspension as a result of an Investigation held on May 5, 1983. The Claimant was charged with violations of Rules 801 and 802 on April 22, 1983. Rule 801 states "Employees will not be retained in the service who are quarrelsome or otherwise vicious or who conduct themselves in a manner which would subject the railroad to criticism. Any act of hostility, misconduct . . . affecting the interest of the company is sufficient cause for dismissal." Rule 802 states "Courteous deportment is required of all employees in their dealings with the public, their subordinates, and each other. Boisterous, profane, or vulgar language is forbidden."

"Employees must not enter into altercations . . . while on duty." The Claimant was charged with striking a co-worker, Ms. Sandra Parks. The Carrier, as a result of the Investigation, found that there was no evidence the Claimant actually struck Ms. Parks but felt there was evidence of two altercations which occurred on April 22, and, as a result, the Claimant was suspended for 30 days.

The Organization argued Rules 38 and 39 were violated as the Carrier had no proof that an altercation occurred between the Claimant and Ms. Parks. The incident was not that serious, and, in any event, it was Parks who initiated the obscenities. The Claimant and other employees were very upset due to an accident which involved a co-worker.

The Carrier noted each of the participants received a 30-day suspension. The suspension was not for any physical contact, which was not proven at the Investigation. If physical contact had occurred, a more serious disciplinary penalty would have been given. The Carrier argued the Claimant had originally precipitated the incident because of some remarks that he had made toward Ms. Parks. The Carrier argued the penalty under the circumstances was fair and proper due to the potential harm that could befall employees under these circumstances.

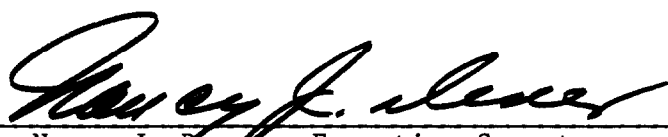
Upon complete review of the evidence presented, the Board finds the Carrier has conducted a fair and impartial Investigation. The Board finds the Claimant and Ms. Parks did engage in two altercations on the date in question, and, while the Claimant did precipitate the incidents with his initial remarks, both altercations seem to have been started by the other party. This Board considers the behavior on the part of both the Claimant and Ms. Parks to be reprehensible since this kind of activity very often leads to serious physical confrontations. The Carrier has the right to expect that employees will devote themselves exclusively to the service of the Carrier and not bring their personal antagonisms onto the property. In addition, the Claimant is a Leadman and, as such, has additional responsibilities over and above a regular employee. It was his duty in this case not to respond to the verbal abuse by Ms. Parks but to keep walking and perform the duties required of him by the Carrier. However, the Board finds the penalty given to the Claimant to be excessive given the circumstances of this case, particularly in light of the fact that neither altercation was started by the Claimant. Therefore, the Board will order the penalty reduced to a 5 working day actual suspension. The Organization's Claim for interest is specifically denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1986.