

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
(  
( Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company (SCL) violated the controlling agreement, in particularly Rule 32, when Electrician T. G. Kosharek, was unjustly suspended thirty (30) working days commencing July 12, 1982 and continuing through August 20, 1982 at Tampa, Florida.
2. That accordingly, the Seaboard System Railroad Company compensate Electrician T. G. Kosharek in the amount of eight (8) hours pay per day at the pro rata rate, both dates inclusive and his personal record be cleared of the investigation due to him being improperly suspended for thirty (30) days commencing July 12, 1982 and extended through August 20, 1982.

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 scenario in this dispute as gathered from the lengthy testimony at the investigation is that the General Foreman, Heavy Locomotive Repair Shop, Tampa, Florida, accompanied by an Electrical Foreman, boarded Locomotive Unit 708 at the strip-down station to continue an on-site investigation of an accident that occurred the preceding day.

The General Foreman noticed the presence of Electrician Apprentice Sirmans on the running board of the unit and summoned him to the unit cab to question him on the procedure of removing the electrical locker panel.

While looking down the running board to see whether the Apprentice was on his way to the cab, the Electrical Foreman saw the Claimant on the Shop floor looking up, waving his hands, putting his hand over his mouth, shaking his head to and fro in the direction of the Apprentice coming down the running board. As the Electrical Foreman turned to go back into the cab, he observed Foreman Ingram also on the shop floor approaching the end of the unit.

Foreman Ingram in the course of his duties was in the stripping station area, saw the Claimant looking up at the cab, saw the Claimant waving his hands, shaking his head back and forth, "no", and putting his hands to his mouth.

The General Foreman's back was to the Claimant, pointing to the DC fan contactor, talking to the Apprentice. The Apprentice could see the Claimant on the shop floor.

Foreman Ingram walked up behind the Claimant and asked him what he was doing. The Claimant responded that the Apprentice should keep his mouth shut.

After questioning the Apprentice, and after the inquiry had been completed, the General Foreman and the Electrical Foreman got off the unit and were met by Foreman Ingram. The two Foremen who had observed the Claimant told the General Foreman what had happened during the time the Apprentice was being questioned. The General Foreman then proceeded to his office.

The Electrical Foreman walked about half way down the shop area where he saw the Claimant and the Claimant's partner. He questioned the Claimant about his being in the strip-down area and what he was up to. The Claimant's response was that he told the Apprentice to be quiet, that he didn't need to say anything to any of the Foremen. The Electrical Foreman told the Claimant he should not be doing anything like that. The Claimant's further response was that nothing could be proved because he could have been swatting a fly away from his mouth. He was told that might be true but he should not interfere with an investigation that the General Foreman was trying to conduct.

After the encounter, the Apprentice was asked to go to the General Foreman's office where he outlined his version of the matter. At the investigation the Apprentice testified that he was explaining to the General Foreman about taking the fans out and happened to look down and saw the Claimant waving his hands back and forth so he, at the time, thought that the Claimant was telling him to watch what he was saying or be quiet, or whatever.

The General Foreman subsequently charged the Claimant in an Investigation Notice for attempting to prevent the Apprentice from giving information May 13, 1982 regarding the personal injury of an Electrician.

The Investigation Notice charged the Claimant with his attempt to prevent the Apprentice from giving information on May 13, 1982, regarding personal injury of an Electrician on May 12, 1982, citing Rules 1, 12 and 14 of Mechanical Department Regulations. The latter Rule provides that employees must not unnecessarily interrupt by conversation or otherwise other employees in the discharge of their duties.

At the Investigation the Claimant contended he saw three Foremen talking with the Apprentice and felt in being responsible for his job and that of the Apprentice, he should find out what the problem was and motioned to the Apprentice to come to him. After the Foremen departed, the Apprentice descended and explained to the Claimant that he was being questioned about removing the panel.

The Claimant contended he was unaware that the Supervisors were investigating an accident. He also stated that he had no idea that he was to be investigated as no Supervisor asked him what he did or why, notwithstanding the previous testimony of the Electrical Foreman and Foreman Ingram describing their encounter with the Claimant.

The testimony given by the Claimant at the Investigation and that given by the two Foremen is in conflict, one version against the other. This Board has held many times that the credibility of those testifying, their demeanor and weight given to their testimony is for the determination of the Hearing Officer. We are not the trier of the facts.

The Organization argued that the Claimant did not receive a fair and impartial Investigation, that he was unjustly suspended and that he lost eight hours pay each day of the suspension, concluding that the Carrier did not meet its burden of proof.


The Board finds that the Claimant was accorded a fair and impartial investigation under the Rules of the Working Agreement. The Carrier's decision to discipline the Claimant to the extent of the 30-day suspension was based on substantial evidence. We will not reverse the Carrier's decision.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of May 1986.