

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Maine Central Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement the Maine Central Railroad Company has unjustly disciplined Waterville, Maine Electrician Robert J. Perkins when it assessed 60 Demerits against him effective February 13, 1984.

2. That the Maine Central Railroad Company has failed to reply to the appeal in this case within the time limits allowed by the current Agreement and therefore the instant claim should be sustained without consideration of the merits.

3. That accordingly, the Maine Central Railroad Company should be ordered to clear the record of Electrician Robert J. Perkins of the 60 Demerits assessed against him, and in the event such assessment of Demerits causes him to be held from service, that the Maine Central Railroad Company accordingly should be ordered to restore Electrician Robert J. Perkins to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole.

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, Robert Perkins, was an Electrician in the employ of Carrier on January 16, 1984, when his conduct on that date led to an Investigation into the same in which he was charged with:

"That on the afternoon of January 12, 1984 and on the morning of January 16, 1984, you were in violation of Rule 703, Form MD-199 'Rules Governing Mechanical Department Employees'.

RULE 703 states: 'Employees who are careless of the safety of themselves of (sic) others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in such a manner that the railroad will be subject to criticism and loss of good will, will be subject to dismissal from the service'".

As a result of the evidence adduced at the Investigation, the Investigating Officer found that the charges against Claimant had been proved and assessed sixty (60) demerits against his record.

Claimant was an employee who had recently transferred to the Carrier's Waterville, Maine location. Before this time he had been a long-time employee of the railroad at another location.

At the time of the incident a Carrier Foreman had observed that the Claimant had been standing at one location for a lengthy period of time and had been engaged in conversation with several of his fellow employees. Obviously believing that Claimant was away from his work that he should have been performing, the Foreman approached Claimant about the matter. During the course of this confrontation Claimant became disagreeable and a verbal altercation occurred.

At the Investigation the Carrier witnesses testified that Claimant had become abusive. The Foreman ordered Claimant to accompany him to the Carrier office and Claimant refused. Upon hearing this refusal the Foreman suspended Claimant from duty. After the suspension Claimant went with the Foreman to the office.

The individual sought in the office was not in at the time. Several days later Claimant came to the office and found him. Claimant handed this individual, the Shop Manager, a letter which contained allegations of abuse to himself and threatened legal and other remedies. The Manager testified that because discipline was stern at this shop and because Claimant was new to this shop, he offered to remove the suspension and put Claimant back to work. A few days later Claimant refused this offer and demanded a letter of apology for the way he had been treated. After this the Manager told Claimant that he had no choice except to write out charges for insubordination

Claimant's testimony was that he was doing Union business and that when approached by the Foreman he had been a reasonable man. The Foreman had become abusive and had begun to harass him.

In our review of the Investigation we are held to the time honored Rule that conflicts in the evidence normally are resolved by the Investigating Officer. Only he has had the opportunity to observe the demeanor of the witnesses and to listen to the tenor of their voices, valuable tools in assessing credibility. We are only authorized to overturn these Findings when there is evidence in the record that would clearly contradict these Findings or when there is evidence that would establish that the Investigating Officer was so biased toward Claimant to evidence prejudgment. We have carefully reviewed the Transcript and find no evidence of this nature. Therefore, we must allow the credibility Findings to stand.

Two procedural arguments have been made by Claimant. One is that the Transcript is so inaccurate to lead to the conclusion that it is deliberately altered by the Carrier. We reject this argument. While the Transcript has some obvious flaws, they are evidence of poor stenographic work and do not hamper decision making.

Another argument is that the Carrier has defaulted on the time limits and is barred from defending this appeal. This arose because it is obvious that Claimant was not aware that the original thirty (30) day limit was changed in 1972 to conform to the limits of Rule 31 of the Agreement. Rule 31 states in pertinent part:

"Should any claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance".

The flow of correspondence clearly establishes that the answer of the Carrier is well within the sixty day limit. We find no merit to this procedural argument.

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 9th day of July 1986.