

The Second Division consisted of the regular members and in addition Referee Ronald J. Nelson when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employee:

1. That under the current Agreement the National Railroad Passenger Corporation unjustly suspended Electrician James Mitchell, 30 working days effective February 19, 1985 through March 30, 1985.

2. That accordingly the Carrier be ordered to restore Electrician James Mitchell 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; 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; and expunge 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 employee or employees involved in this dispute are respectively carrier and employee 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 suspended for 30 working days following a formal Investigation. The findings of the Investigating Officer confirmed the initial charge that the Claimant had failed to properly inspect a sleeper car and for failure to detect heating defects on said car, and for falsely reporting that the car had no defects.

The crucial issue in this case is the credibility of the evidence. It is well settled that, absent arbitrary or capricious behavior, or abuse of discretion, this Board will not substitute its judgment for that of the Hearing Officer. Only the trier of fact receives the evidence, hears the testimony and observes the demeanor of witnesses. Only the trier of fact can weigh the probative value of evidence. Absent patently unreasonable conclusions, abuse of discretion, or arbitrary or capricious behavior on the part of the Hearing Officer, this Board will not overturn the Carrier's conclusions of fact. (Second Division Award No. 9174.)

The record is clear that Claimant was made aware of the lack of heat in the car which had just been added to the consist. The Carrier's General Foreman specifically questioned Claimant about lack of heat and Claimant advised the General Foreman that "... (he) I had just turned the heat breaker switches on..." and that the car would heat up in a short while. Yet the testimony of the General Foreman and the Claimant's immediate Foreman shows that the missing coils and breakers which had to be replaced could only be those which the Claimant claims he activated. The Hearing Officer did not unreasonably resolve this inconsistency in the testimony.

The overwhelming presumption from all of the evidence in the record is that the Claimant failed to inspect the car in light of the general responsibilities of the Claimant as shown in the uncontroverted testimony of Claimant's immediate supervisor, and the direct inquiry made by the Carrier's General Foreman. The well settled rule allows the Hearing Officer all reasonable conclusions and inferences from the testimony and evidence proffered by the witnesses. The record contains sufficient substantial evidence to justify the assessment of the discipline. The Carrier has met the requisite burden of proof.

It is clear from the record that the Carrier did not, as alleged by the Organization, utilize the Claimant's prior discipline record to satisfy the Carrier's burden of proving the charges against the employee. Clearly, the Claimant's record was utilized to determine the severity of the discipline assessed by the Carrier. Thus, the Board concludes that the discipline assessed in this case should not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.