

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(Central of Georgia Railroad Company

Dispute: Claim of Employees:

1. That Carman T. C. Davis, Columbus, Georgia, was unjustly suspended from service for a period of five (5) work days, August 13, 1984 through August 17, 1984.

2. That accordingly, the Central of Georgia Railroad Company be ordered to compensate Carman T. C. Davis for time lost during this five working days suspension.

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 were given due notice of hearing thereon.

Claimant herein was employed as a Carman at Carrier's repair track at Columbus, Georgia. Claimant was assigned as a Lead Carman on the third shift, with one other Carman assigned to the repair track on the same shift.

On July 25, 1984, a car was released from Repair Track No. 1 in a defective condition. The Carman on the repair track other than the Claimant worked on the car that was released in a defective condition. Following a preliminary Investigation conducted in accordance with the applicable Agreement, the Carman who actually performed the work on the car involved was assessed discipline of five days suspension and Claimant was assessed discipline of ten days suspension. Claimant requested a formal Investigation, resulting in the discipline of ten days suspension being held in abeyance. Following the formal Investigation conducted on July 31, 1984, the discipline assessed Claimant was reduced to a five-day suspension.

The Organization contends that the discipline assessed Claimant was not for just cause and cites a general bulletin issued October 13, 1981, reading in part:

"3. When repairs are completed on a car, only the foreman will release the car."

The Carrier contends that the Claimant, being assigned as a Lead Carman, was responsible for the car being released from the repair track in a defective condition, as well as the Carman who actually worked on the car.

We have reviewed the rather lengthy Investigation, and find no procedural violation of the Agreement so far as the discipline assessed Claimant is concerned.

In discipline cases the burden of proof rests with the Carrier. The Carrier must present substantial evidence in the Investigation to sustain discipline. "Substantial evidence" has been defined by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."  
(Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229).

(Second Division Award No. 6419).

The matter of proof in the present case gives us concern. Lead Carman positions are provided for in that part of Agreement of December 11, 1974, reading:


"(e) Lead workmen may be assigned in addition to performing the regular work of their gang, to take the lead and assign and direct work of other members of the gang, not to exceed ten (10) employees. For the performance of such work lead workmen will be paid a differential of 12¢ per hour above the minimum rate paid mechanics in their gangs."

From our review of the Transcript of the Investigation conducted on July 31, 1984, we do not find that the Carrier has presented substantial evidence to warrant discipline against the Lead Carman for work improperly performed by the Carman who actually worked on the car. A Journeyman Mechanic must assume responsibility for the proper performance of his work. We do not consider that the Lead Carman in this instance assumed the status of a Supervisor. The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

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