

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: (

(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employee:

1. That the Indiana Harbor Belt Railroad Company violated the terms and conditions of the current working Agreement, specifically Rules 39, 36, 48, 31, 20, 35, 1, 18, 16, 11, 10, 7 and 6 and the Understanding Relating to Physical Examinations of Employees, when they suspended Carman J. Sanders for a period of ninety (90) days. Sixty (60) days, October 14, 1985 through December 12, 1985 were actual suspension. Thirty (30) days were record suspension. Said suspension is totally unreasonable, unfair, unjust, arbitrary, capricious, and an abuse of managerial discretion.

2. That the Indiana Harbor Belt Railroad Company be ordered to compensate Carman J. Sanders for all time lost, including all overtime and all holiday pay he would have been entitled to had he not been unjustly suspended. Also, that his record be cleared of the sixty (60) day actual suspension and the thirty (30) day record suspension as a result of the above Agreement violations.

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.

At the time of the occurrence giving rise to the dispute herein Claimant was employed by the Carrier as a Carman, and was Local Chairman of the Organization. On August 23, 1985, he was instructed to attend an Investigation scheduled for August 29, 1985, on two charges:

"1. Insubordination to Manager, Car Repair and Inspection D. A. Schiewer on Friday, August 16, 1985, at approximately 3 p.m., by refusing a direct order to submit to a urinalysis at the Southeastern Medical Clinic during your examination in connection with personal injury that occurred at the Blue Island Repair Track.

2. Being an accident-prone employee in that you have sustained seventeen (17) personal injuries; three (3) of which have been lost-time, since March 6, 1969, also past informal hearings and formal investigations placing you on notice that the carrier would, and I quote, in part:

' . . . keep in mind that further disregard of safety rules and continuation of personal injuries will lead to another investigation and whatever measures necessary to ensure your safety as well as that of others.'

By agreement, the Investigation was postponed to September 4, 1985, recessed, and reconvened on September 13, 1985. A copy of the Transcript of the Investigation has been made a part of the record. Following the Investigation, Claimant was assessed discipline of sixty days actual suspension and thirty days deferred suspension. The Transcript of the Investigation is lengthy, but we do not consider that Claimant was deprived of any of his substantive rights. He was present throughout the Investigation and was represented.

The record shows that Claimant suffered a personal injury about 1:30 P.M., August 16, 1985. He was taken to Carrier's Medical Examiner at the Southeastern Medical Clinic. He was accompanied to the Medical Clinic by Carrier's Manager of Freight Car Repairs and Inspection, Claimant's superior officer, who testified in the Investigation that Claimant was treated for his injury, which was diagnosed as a bruised injury to his right big toe. He also testified that members of the Medical Staff at the Clinic requested Claimant to submit to a drug screening test, which Claimant refused, and that he instructed the Claimant to take the drug screening test and Claimant refused.

Without detailing all the evidence, we find that substantial evidence was adduced in the Investigation in support of the charge of insubordination against Claimant. The "substantial evidence" Rule was set forth by the Supreme Court of the United States as:

"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 Awards Nos. 6419, 11179, 11180.)

Claimant clearly refused to comply with an order of his superior officer. No employee may properly decide for himself the instructions that he will comply with and those that he will ignore. It was Claimant's obligation to comply with the instructions given him by his superior officer, and then handle through the grievance procedure if he considered that his rights were violated. The record shows that Claimant did subsequently submit to a drug test on September 8, 1985, and returned to work the next day.

Any allegation as to Claimant's civil rights having been violated is not properly addressed to this Board.

We find and hold that Part (1) of the charge of August 23, 1985, was sustained.

As to Part (2) of the charge, the record shows that Claimant had seventeen injuries over a period of fourteen to fifteen years of service, far in excess of the average number of injuries of Car Department employees of the Carrier. One employee had more personal injuries than Claimant - twenty over a period of thirty-eight years of service. The figures are convincing that Claimant was accident prone. This Board has upheld severe discipline, including dismissal, in such cases. In Award No. 8912 of this Division, involving the same parties as herein, it was held:

"... the Board finds that the Carrier is not required to retain in its service an employee who cannot, or does not, perform his work with safety to himself or to other employees."

See also First Division Award No. 20438, and Third Division Awards Nos. 24534, 25672, 25895.

Considering the seriousness of the charges: (1) insubordination, and (2) being an accident prone employee, we find the discipline imposed not to be arbitrary, capricious or in bad faith. There is nothing to show that Claimant was discriminated against because of his actions as Local Chairman of the Organization.

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 1st day of April 1987.