

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

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

Dispute: Claim of Employees:

1. That under the current Agreement the National Railroad Passenger Corporation unjustly suspended Electrician Michael Vent 20 working days held in abeyance for six (6) months, effective January 28, 1985.

2. That accordingly the Carrier be ordered to restore Electrician Michael Vent 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; 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.

The Claimant was regularly employed as an Electrician at Carrier's Sunnyside Yard located in Long Island City, New York, on all dates relevant to this matter.

On November 24 and 26, 1984, respectively, Claimant was assigned to the first shift at Sunnyside under the supervision of General Foreman Joseph Pipitone and Foremen Steven Keats and Michael Sozio.

On November 24, 1984, at approximately 8:00 A.M., and again at 9:30 A.M., Foreman Keats instructed Claimant and his partner to place on charge, cable, inspect, and repair certain cars on Yard Tracks 4 and 7.

At approximately 11:00 A.M. on November 24 Foreman Keats determined that the necessary work had not been completed on the cars situated on Track 7, nor on the cars situated on Track 4. Foreman Keats could not locate the Claimant on the premises, and notified the General Foreman. Claimant was not observed on the property again until approximately 1:00 P.M., when Messrs. Pipitone and Keats observed the Claimant and a fellow employee walking from behind a building known as the Old Boiler House. When asked to explain his whereabouts by his Foreman, Claimant provided a non-responsive answer. In the intervening period of time, Foreman Keats assigned another Electrician to make the repairs to the cars on Tracks 4 and 7.

The second incident which forms the premise for this proceeding occurred when on November 26, 1984, Claimant was assigned by Foreman Michael Sozio to cable, inspect, and repair cars that would be dispatched as Train 283. About the time that the train was to be dispatched for loading at Pennsylvania Station, Foreman Sozio was notified by a Car Inspector that the communicating whistle was inoperable. The Foreman then walked the outside and found that a cable was missing. The Claimant was not in the area. Foreman Sozio replaced the cable and advised the Engineer to proceed to the station. As the train passed, the Foreman noticed that the rear car had no marker lights. He then ordered the train stopped and climbed aboard to turn on the marker lights.

As a result of his alleged failure to properly attend to his duties on November 24 and 26, 1984, Claimant was notified by letter dated December 4, 1984, to appear for a formal investigation in connection with the following charge:

"CHARGE:

Violation of Rule 'K', of the Amtrak Rules of Conduct book, which states:

Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor.

SPECIFICATION:

That on Saturday, 11-24-84, you failed to cable and properly inspect and repair your trains, layover on track 4 and track 7, you were not to be found in yard from 10:00 a.m. until 1:00 p.m., making it necessary for another employee to complete your trains."

"Also, on 11-26-84, you failed to properly inspect and repair your train 283, there was no communication signal or marker lights on train. Your Foreman had to make necessary repairs to train."

As a result of the evidence adduced at the investigation, Claimant was found guilty of the charges preferred. By letter dated January 28, 1985, Claimant was assessed discipline of a 20-day suspension, held in abeyance for six months.

On appeal, the Organization contends that:

- (a) The Investigating Officer committed a fatal procedural error in not admitting into the record of the instant proceeding the transcript of a companion proceeding involving a fellow-employee and the Claimant which arose out of the same fact situation as the first incident in the instant proceeding, and
- (b) The Carrier failed to sustain its burden of proof on the merits.

In a well-reasoned and cogent argument, the Organization contends that since the Investigating Officer's decision in Part (a) above was a fatal procedural defect with respect to the first portion of the charge, and further that the Investigating Officer, in his decision, ascribed the "guilty" verdict to both portions of the charge, and assessed the penalty across both charges that the entire Claim must be sustained.

The Carrier contends that all procedural requirements were met, and that the Claimant was not prejudiced in any fashion.

After a very careful review of the record of the proceedings and the principles involved, this Board is of the opinion that the Investigating Officer committed a fatal procedural error by refusing the Claimant, through his representatives, the opportunity to cross-examine fully the testimony of the General Foreman, by comparing the General Foreman's testimony in the instant case with that given in the companion case which arose out of the same fact situation as the instant proceeding on November 24, 1984.

The charge of the Investigating Officer is to bring to light all of the relevant facts. The record in the instant case discloses that there may have been a discrepancy in the testimony of the General Foreman which may have been impeached by the Claimant. The Investigating Officer was under an obligation to consider all of the relevant facts offered by the parties and then to ascribe the proper weight to the evidence as offered by the parties. To summarily deny the admission into the record of proffered evidence, which may have the effect of impeaching the testimony of an important corroborating witness, is a fatal abuse of discretion on the part of the Investigating

Officer. This Board is cognizant of the fact that in most of the proceedings at the lower levels, the parties are not represented by sophisticated trial attorneys who fastidiously cling to detailed procedural requirements; nevertheless, fundamental procedural safeguards available to the parties must be protected and adhered to if the Claimant is to have a fair and impartial hearing.

After a full and careful consideration of the record, this Board is of the opinion that the Claimant was not afforded a fair and impartial investigation. Consequently, the Board need not consider the appeal on the merits. Inasmuch as the proceeding was faulty, the penalty assessed must fall. In the instant case, Claimant was assessed a deferred suspension, and accordingly it appears that the Agreement in effect between the parties provides that the Claimant's record be expunged with respect to this matter.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1987.