

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(CSX Transportation, Inc.
(Seaboard System Railroad)

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended Laborer Andrew Foster, I.D. No. 154974, was unjustly suspended from the service of the Seaboard System Railroad on October 2, 1985 through October 31, 1985, both dates inclusive, after a formal investigation was held at Hialeah, Florida, on September 11, 1985.

2. That accordingly, Laborer Andrew Foster be compensated for all time lost, vacation, health and welfare benefits, hospital and life insurance and dental insurance premiums be paid effective October 2, 1985 through October 31, 1985, both dates inclusive.

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 employees involved in this dispute are respectively carrier and employees 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 as a Laborer at Carrier's Locomotive Repair Facility at Hialeah, Florida, with assigned hours 8:00 A.M. to 4:00 P.M., and lunch period scheduled from 12:00 noon until 12:20 P.M.

On August 29, 1985, he was instructed by Carrier's General Foreman to attend Investigation scheduled for 3:30 P.M., September 4, 1985:

"...to develop facts and determine your responsibility, if any, in connection with possible violation of Rule #3 of the Seaboard System Railroad Rules and Regulations of the Mechanical Department, that portion reading '...lying down or in a slouched position...will subject the offender to dismissal.'

This possible violation occurred on the washer track at the Hialeah Diesel Shop at approximately 12:30 P.M., August 29, 1985, when you were found in the prone position in the cab of Amtrak Unit 389."

At the request of the Local Chairman of the Organization, the Investigation was rescheduled to be held at 3:30 P.M., September 11, 1985, at which time it was conducted. On September 25, 1985, Claimant was assessed discipline of thirty days actual suspension. A copy of the transcript of the Investigation has been made a part of the record. We have reviewed the transcript and find that the Investigation was conducted in a fair and impartial manner.

We find that substantial evidence was adduced in the Investigation, including Claimant's statement, that Claimant was observed in a prone or slouched position in the cab of Amtrak Unit No. 389 at about 12:30 P.M., August 29, 1985, in violation of that portion of Rule 3 of Rules and Regulations of the Mechanical Department cited in the letter of charge issued on August 29, 1985.

The contention is made that Claimant worked beyond the beginning of his scheduled meal period, and was entitled to extend his lunch period proportionately. An employee may not properly change his assigned work hours without the permission of supervisory personnel. If Claimant wanted to work into his lunch period and then extend that period he should have requested permission to do so from his Supervisors.

The Board's attention has also been called to Claimant's prior disciplinary record, which was far from satisfactory. An employee's prior disciplinary record may always be considered in arriving at the discipline to be imposed for a proven offense. Considering Claimant's prior disciplinary record, the penalty imposed was not arbitrary, capricious or in bad faith.

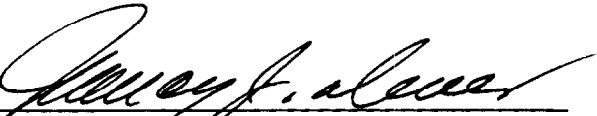
There is no proper basis for the Board to interfere with the discipline imposed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1987.