

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

(Brotherhood Railway Carmen - Division Transportation
(Communications International Union
PARTIES TO DISPUTE: (
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri-Kansas-Texas Railroad Company violated the controlling agreement, particularly Rule 26, when they arbitrarily suspended Carman D. R. Clark from service for a period of fifteen (15) days on September 29, 1986, following investigation which was held on September 24, 1986, Houston, Texas.

2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to remove the fifteen (15) day suspension from Carman Clark's personal 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 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 waived right of appearance at hearing thereon.

Following an investigation conducted on September 14, 1986, Claimant was assessed discipline of fifteen days deferred suspension for alleged violation of Rule 4026 of Carrier's Safety, Radio and General Rules for all Employees on August 27, 1986.

A copy of the transcript of the investigation of September 14, 1986, has been made a part of the record. We have reviewed the transcript of the investigation and find that the investigation was conducted in a fair and impartial manner. The charge was sufficiently precise to enable the Claimant and his representative to prepare a defense, and met the requirements of the Agreement. Complaint was made that Rule 4026 was not a negotiated rule. We find no validity to this complaint. The Carrier has the right to unilaterally establish rules that it consider necessary for safe operation that are not in conflict with Agreement rules.

In order to sustain discipline of an employee, it is the responsibility of the Carrier to adduce substantial evidence in the investigation in support of the charge. The "substantial evidence rule" has been set forth 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.)

The matter of proof, so far as the Claimant is concerned, gives us concern. Claimant contended that he did afford proper protection and that he followed the instructions of the yardmaster. The record shows that the Claimant requested that the yardmaster be present at the investigation, but the statement was made that the yardmaster was on vacation and could not be reached.

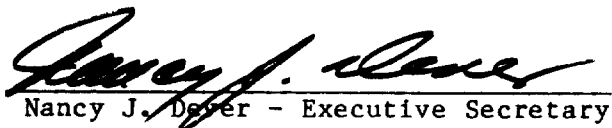
On our study of the transcript we do not find substantial evidence presented by the Carrier to support discipline against the Claimant. The claim will be sustained to the extent of awarding that the discipline be expunged from Claimant's record.

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 11th day of January 1989.