

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11722
Docket No. 11627
89-2-88-2-112

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/A Division of TCU
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(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

a) That the Missouri Pacific Railroad Company violated Rule 31 of the controlling Agreement when they arbitrarily, unjustly and capriciously unjust suspension of fifteen (15) days deferred to Carman J. J. Reyna.

b) That the Missouri Pacific Railroad Company be ordered to clear Carman Reyna's personal record and that he be so advised.

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.

An Investigation was held on July 3, 1987, to determine whether Claimant violated General Rule B and Rule 600 of the Safety, Radio and General Rules for all employees (Form 7908, Revised April 1985). Specifically, the inquiry focussed on why Claimant, despite sufficient time, had not inspected GC 67 (North Local) and GC 66 (South Local) trains on June 11, 1987, at Angleton, Texas. Based on the Investigative record, Carrier concluded that Claimant was guilty of not performing these necessary tasks and accordingly on July 10, 1987, assessed a fifteen (15) day deferred suspension against him. This disposition was appealed by the Local Chairman by letter dated August 5, 1987, and the Claim was denied. In its appeal, the Organization raised both procedural and substantive issues. Namely, it asserted that the charges as written were too imprecise to formulate an effective defense and Claimant's due process rights were violated. As to the latter objection, it pointed out that the same person who assessed the disciplinary penalty also considered and denied the appeal. As to the substantive merits, the Organization asserted that Claimant was not told to work the Locals and, furthermore, there was no clear practice that Locals were worked on during the 3rd shift.

In rebuttal, Carrier contended that the applicable grievance provision of the Controlling Agreement did not set forth any specific appeals process, other than the following arrangement:

"In the case of a claim or a grievance concerning discipline, the Carrier shall require no more than two levels of appeal from the decision of the officer authorized to receive same. Article V of the National Agreement of August 21, 1954 known as the Time Limit Rule applies to the claims and grievances covered by this Agreement. (Amended 9-1-81)." (See Rule 31 Paragraph (i)).

As to the merits, Carrier maintained that the record testimony fully established that it was the practice at Angleton, Texas, for Carmen to inspect the Locals. Thus, it observed that it was clearly Claimant's responsibility to inspect the Locals.

In considering this case, we concur with the Organization's position on the second procedural question. While Rule 31 Paragraph (i) does not delineate a specific hierarchical appeals process, it certainly, by definition, presupposes an independent objective review at each level or stage of the appeals. Such review, at least, preserves the integrity of an Agreement's contracted for due process protections. In effect, the probability of having the same person who initially assessed the discipline, reverse himself or modify a penalty is too remote and would cast legitimate doubt upon the process.

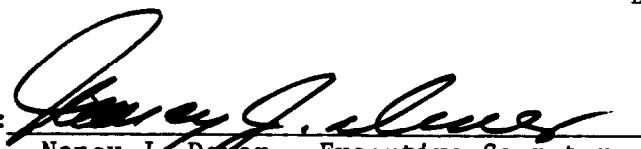
As the Board noted in Third Division Award 24476, it is permissible for a Carrier official to write and serve the Investigative Notice, conduct the trial and assess discipline predicated upon the record evidence. It is not in accordance with due process rights when the same Hearing Officer also serves as a witness or when the first step grievance Appeals Officer is the same person who assessed the discipline. In the case, at bar, we cannot agree that Claimant's appeal was progressed pursuant to the essential requirements of Agreement due process.

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 3rd day of May 1989.