

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(CSX Transportation, Inc. (Formerly Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

1. That the CSX Transportation (formerly Louisville & Nashville Railroad Company) violated the controlling Agreement, particularly Rule 34, when they unjustly suspended Electrician M. W. Martin from service for 30 days (November 25, 1987 through December 24, 1987) at Osborn Yard in Louisville, Kentucky.

2. That accordingly, the CSX Transportation Company (formerly Louisville & Nashville Railroad Company) be ordered to reimburse Electrician M. W. Martin for all monetary losses, remove all references of this investigation from his personal record and restore his seniority with all contractual rights unimpaired, account of this unjust suspension.

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.

On December 19, 1987, Claimant was assessed a thirty (30) days suspension. This discipline was assessed following an Investigation held on December 9, 1987, wherein the Claimant was charged with violating Carrier's Rules and Regulations Nos. 2 & 8. Rule #2 provides that an employee use personal judgement and exercise care to avoid injury to himself or others. Rule #8 provides that employees must not engage in altercations or horseplay, generally, while on duty on Company property.

The Board has reviewed the evidence of this case and finds that while the Carrier did meet its burden of proof regarding Rule #8, it failed to meet its burden of proof regarding Rule #2. The facts establish that the Claimant and his accuser did engage in a verbal altercation during lunch break. However, there was insufficient substantial testimony to conclude that the altercation led to physical injury to the accuser. While the Board recognizes the Carrier's right to discipline, that discipline must relate to factual determinations. As the Carrier met only half of its burden of proof, the discipline will be modified accordingly as it was not shown that the Claimant violated Rule #2.

Claim is sustained, in part.

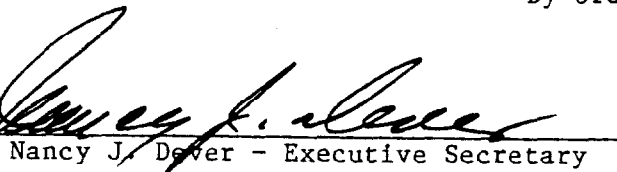
Claimant to be made whole for 15 days of lost wages and benefits.
Thirty day suspension reduced to fifteen days suspension.

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 6th day of June 1990.

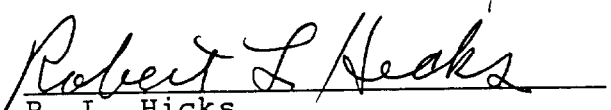
CARRIER MEMBERS' CONCURRING AND DISSENTING OPINION
TO
AWARD 11868, DOCKET 11746
(Referee Cannavo)

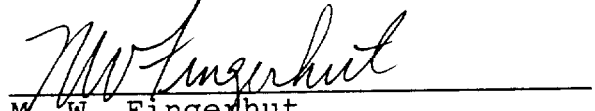
We concur with the Majority's findings that the Carrier met its burden in proving the violations of Safety Rule 8, but dissent to the Majority's findings that Rule 2 of the Rules and Regulations of the Mechanical Department was not violated.


If any safety rule is violated, Rule 2 is also violated as Rule 2 provides in part that:

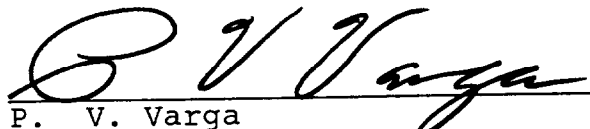
"...Safety rules, published or verbal, must
be followed."

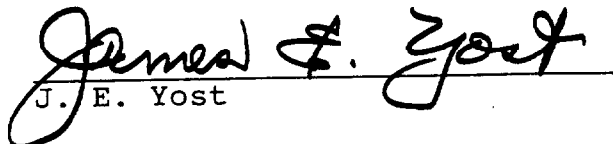
Be that as it may, the quantum of discipline should be based on the offense rather than the number of rules violated. In this instance, Carrier believed that it had assessed the correct amount of discipline and the Majority's opinion to the contrary does not alter that belief.


R. L. Hicks


M. W. Fingerhut


M. C. Lesnik


P. V. Varga


J. E. Yost