

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rule 37, when they unjustly withheld Electrician A. G. Lopez from service beginning April 25, 1989, following investigation held May 5, 1989, was dismissed from Carrier's service on May 22, 1989;

2. That accordingly, the Union Pacific Railroad Company be ordered to compensate Electrician Lopez as follows:

- (a) Compensate him for all time lost at the prime rate of interest;
- (b) Return him to service with seniority rights unimpaired;
- (c) Make him whole for all vacation rights;
- (d) Make him whole for all health and welfare and insurance benefits;
- (e) Make him whole for pension benefits including railroad retirement and unemployment insurance;
- (f) Make him whole for any and all other benefits that he would have earned during the time withheld from service and,
- (g) Any record of this unjust disciplinary action be expunged from his 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.

The Claimant was employed as an Electrician at Las Vegas, Nevada. On April 25, 1989, at approximately 12:40 P.M., the Claimant was instructed to lock the switches and apply blue flags to Train HKYR 22 which was located on West 1 track. On April 25, a Federal Railroad Administration Inspector was in Las Vegas and inspected Train HKYR 22. At the completion of the inspection, a Carrier Official went to the west end of the train where it was pointed out to him by the FRA Inspector that a blue flag had not been attached to the train and the switch for the crossover track had not been locked. The Carrier Official approached the Claimant's immediate Supervisor and asked him about the lack of a blue flag and the unlocked switch. The Supervisor related that the Claimant had been given the assignment to blue flag the train and lock the track and the Claimant had advised him the assigned work had been completed. After discussing the matter with the Claimant, he was suspended from service.

Under date of April 26, 1989, the Claimant was notified to attend an Investigation on May 5, 1989. The Investigation notice reads in part, as follows:

"****concerning your allegedly failing to comply with instructions of foreman J. Loyd in properly blue flagging and locking West 1 Track for HKYR 22 while it was being inspected by F.R.A. Inspectors and being repaired by Carman R. P. Stump at approximately 12:40 p.m. on April 25, 1989 while you were employed as electrician****."

Subsequent to the Investigation, the Claimant, under date of May 22, 1989, was notified he was dismissed from service. Following correspondence between the parties and conferences it was agreed by the parties on November 17, 1989, that the Claimant would be reinstated without prejudice to his right to proceed to arbitration for a final conclusion.

The Organization argues that it was improper for the Carrier to withhold Claimant from service pending the Investigation. Rule 37, the Discipline Rule, permits suspension in proper cases pending a hearing. No definition of "proper cases" appears in the Rule. We consider the charge in the instant case to be a serious one, therefore, cannot find fault with the Carrier in this case. The Rule provides for compensation in the event an employee has been unjustly suspended.

The Organization contends the Claimant was not apprised of the precise charge against him as required by Rule 37 and take exception to the Investigation notice containing a multitude of Rules the Claimant allegedly violated. Our review of the Investigation notice indicates that it does contain a precise charge. The notice gives the time, date, and exact location where the alleged incident took place and listed the instructions with which the Claimant allegedly failed to comply with. The Investigation notice lists many Rules the Claimant allegedly violated. After reviewing the Rules we are of the opinion some were not pertinent to the charge, however, the fact remains the Claimant was apprised of the precise charge as required by the Rule. The Claimant was thus in a position to prepare a proper defense.

A review of the Investigation testimony indicates that the Claimant received a fair and impartial Hearing. We can find no bias on the part of the Officer that conducted the Investigation, as alleged by the Organization.

It is our conclusion that enough probative evidence was adduced at the Investigation to prove that the Claimant was guilty of the charge. It is evident that the Claimant failed to properly blue flag and lock the crossover switch to West 1 Track so as to assure complete protection of Train HKYR 22 and the employees working thereabout.

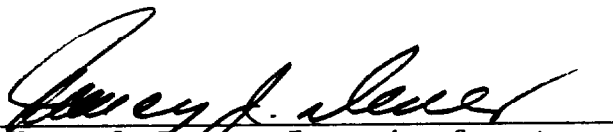
We now turn to the discipline assessed the Claimant, i.e., discharge and subsequent conditional reinstatement. This Board finds the degree of discipline assessed in this case to be unreasonable and excessive. The Claimant, with 37 years of service, apparently had an unblemished discipline record. Considering the Claimant's discipline-free record of 37 years we believe 15 days suspension would be appropriate discipline in this case. The 15-day suspension period shall be calculated to begin April 26, 1989. Payment for time out of service in excess of the 15-day period shall be in accordance with Rule 37.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.