

The Second Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU  
(  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That in violation of the controlling Agreement, Rules 38 and 39, Carman T. C. Haywood was unjustly suspended from the service of the Southern Pacific Transportation Company (Western Lines) for a period of sixty (60) days following an investigation held on July 26, 1990.

2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to compensate Carman T. C. Haywood for any and all wages, including overtime, lost by him during the seventy-two (72) day suspension, including time withheld from service pending the investigation, and that any seniority, vacation, railroad retirement or any other rights or benefits to which he may be entitled under Rule 39 of the Agreement which may have been adversely affected by said improper suspension be restored, and that his personal record be cleared of any connection with the improper hearing and suspension with an apology for same.

3. That the Southern Pacific Transportation Company (Western Lines) violated Rule 33 of the controlling Agreement when it failed to respond to the Organization's letter of September 12, 1990 advising of the sixty (60) day time expiration and that, therefore, the claim be allowed as presented.

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.

Claimant was charged with physically attacking his Foreman on July 15, 1990. At a Hearing held on July 26, 1990, the Foreman testified that Claimant put his head into his stomach, placed his hands under his armpits,

and tried to throw him into the back of a pickup truck. Claimant was removed from service on the same day. The Claimant testified that the attack never took place.

Subsequent to the hearing, Claimant was found guilty as charged, and assessed a 60-day suspension retroactive to August 1. On September 25, 1990, the suspension was reduced to 55 days and Claimant was reinstated.

After a review of the record, the Board finds that Claimant received a fair and impartial Hearing, and that there was substantive evidence that he was guilty as charged. While Claimant's testimony was in conflict with the testimony presented by the Carrier's witness, it has long been established that the trier of facts resolves those conflicts, and we will not substitute our judgment as to findings of fact for that of the Hearing Officer, who was able to personally observe the witnesses and weigh and evaluate their testimony.

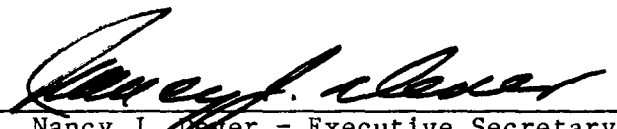
The Board notes that Claimant's suspension was for the period August 1 through September 25, 1990, but that he was removed from service on July 15 and was thus out of service for a total of 70 days. We find that he is entitled to reimbursement in accordance with the Agreement for the additional 15 days out of service, and we will sustain the Claim to that extent.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1992.