

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12820
Docket No. 12732
95-2-93-2-84

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

(Brotherhood of Railway Carmen Division -
(Transportation • Communications International
(Union
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM: "Claim of the Employees:

1. That under the current Agreement, Coach Cleaner N.E. Frederick was unjustly treated when she was assessed a sixty seven (67) day suspension from the service commencing on March 3, 1992, as result of investigation held March 16, 1992 at 9:00 AM for alleged violation of portions of rules 1007, 1102, and 1206 of the General Rules and Regulations of the Southern Pacific Transportation Company. (Western Lines)
2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to compensate Coach Cleaner N.E. Frederick for the sixty seven (67) days she was suspended, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and all other rights that are a condition of employment, and that the investigation and suspension be cleared from her 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 employee or employees involved in this dispute are respectively carrier and employee 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.

At approximately 7:30 a.m. on February 27, 1992, Claimant was driving the All Material Transport (AMT) vehicle down a tunnel entry ramp, when she hit a wall and lost control of the vehicle. The vehicle sustained minor damage and Claimant was not injured. Claimant's supervisor investigated the accident on March 3, 1992, and suspended Claimant from duty pending investigation. By letter of March 6, 1992, Claimant was notified to be present for a Formal Hearing into the incident. That hearing was held on March 16, 1992. Following the hearing, Claimant was notified on May 8, 1992 that she had been found guilty of violating Rule 1007 and was assessed with sixty-seven (67) days' actual suspension.

A careful review of the record before the Board leaves little doubt as to Claimant's culpability in this case. Remaining, however, is the matter of *quantum* of discipline assessed. The Employees protest that in light of the minor nature of the damage to the AMT -- a fact confirmed by Carrier's submission -- an actual suspension of sixty-seven (67) days is excessive. It is a long standing tradition of this and other Boards to refrain from "second guessing" Carrier's assessment of discipline, once a charge has been proven. In the instant case, however, evidence on the record demonstrates that the discipline assessed this Claimant is utterly out of proportion with the gravity of her violation. Carrier implicitly confirmed the relative difficulty of operating the AMT when it instituted an "instruction program" for all AMT operators shortly after the incident at issue.

In view of the limited damage to Claimant's vehicle and the acknowledged difficulty other employees apparently encountered while driving it, the Board will reduce Claimant's discipline to an actual fifteen (15) day suspension.

AWARD

Claim sustained in accordance with the Findings.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

National Railroad Adjustment Board
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.