

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13576

Docket No. 13452

00-2-99-2-48

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

**(Brotherhood of Railway Carmen Division
(Transportation Communications International Union**

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13.1, when they arbitrarily assessed Fred E. Curtis with a thirty (30) day suspension from service as a result of an investigation held on April 21, 1998.

That accordingly, the Springfield Terminal Railway company be ordered to compensate Carman Fred E. Curtis in the amount of eight (8) hours pay for each workday he was withheld from service commencing May 14, 1998 to and including June 12, 1998. Additionally, that he be made whole with respect to vacation pay and any other benefits as provided by the made whole provision set forth in Rule 13.5 of our collective agreement.”

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 were given due notice of hearing thereon.

Claimant Curtis, a 20-year employee at the time of the incidents at issue, attended an Investigation on March 12, 1998 in response to charges of violating Rule 277. c involving allegedly dismounting from a forklift without setting its handbrake. The Claimant testified on his own behalf at those proceedings. On March 25, 1998, the Carrier determined that the charges put forth had been sustained and assessed a disciplinary suspension of three working days. Thereafter, the Carrier's Assistant Vice President-Human Resources, in considering Curtis' claim on appeal to his office, by letter dated June 26, 1998 advised the Organization's representative that the suspension imposed was being rescinded and that the Claimant would be made whole for all time lost as a result of conflicting evidence adduced at the Hearing.

While those events were playing out, on March 19, 1998 the following charges were leveled against the Claimant:

"You are being charged with violating the Carrier's General Rule GR-L, which reads in part, 'employees who are dishonest . . . will not be retained in service.'

Specifically, in an attempt to exonerate yourself and discredit the Carrier and its officials Mr. Johnston and Mr. Patterson, in a hearing conducted on March 12, 1998, you provided testimony regarding your actions in operating the forklift hand brake. The information you provided, on record, in your behalf was false."

Following this Investigation conducted on April 21, 1998, the Claimant was given a 30-day, disciplinary suspension for providing false testimony on March 12, 1998. This Claim challenges that action, contending that the Carrier has failed to shoulder its burden of proving dishonesty on the Claimant's part. The Organization argues that having determined that the discipline initially imposed could not stand, the Carrier cannot now turn around and discipline the Claimant even more severely for being deceitful in the Hearing that resulted in both his exoneration and removal of the discipline assessed from his file.

The record indicates that the false testimony the Claimant is accused of providing on March 12, 1998 related to the crucial question of whether he had set the hand brakes

on his forklift before alighting from it. The Claimant insisted that he had done so, in flat contradiction to the testimony of the Carrier witness Johnson. (A second Carrier witness, Manager Patterson, is alleged to have also witnessed the Claimant's infraction but was not called to testify.) The Carrier argues that since the Claimant alone had a vested stake in the outcome - exoneration and the avoidance of monetary penalty - in swearing that he had violated no Safety Rule he must have perjured himself. As the Carrier puts it, "Claimant's insistence that he is right and everybody else is wrong proves his intention."

It bears emphasis that in sustaining Curtis' initial claim, the Carrier determined that the testimony of the Claimant and that of witness Johnson was in utter conflict on the hand brake issue. The Carrier's Assistant Vice President fairly concluded that without input from eyewitness Patterson - who was available to testify - the evidence against the Claimant was inconclusive and the discipline could not be sustained.

Although there are minor inconsistencies in the Claimant's testimony during the first Investigation, the record here does not reveal how the bee entered the Carrier's bonnet thereafter causing it to reexamine that record, and to conclude shortly thereafter that the Claimant lied and attempted to discredit the Carrier officials, and yet acquit him of wrongdoing with respect to the handbrake issue on June 26, 1998. Whatever it saw, the Board discerns nothing in this record that could conceivably support a charge of deliberate falsification of testimony or disrespect to the Carrier officials.

The Carrier is undoubtedly correct in its concern that lying, if tolerated, may become the thin edge of a potentially large wedge in disciplinary proceedings. Its right to rigorously enforce legitimate Rules against dishonesty are accordingly beyond question. But its evidentiary burden in establishing willful perjury goes well beyond suggesting that the employee had an incentive to lie or that his recollection of the facts is at odds with that of others. A reasonable quantum of compelling, objective evidence in support of such serious charges is required. The Organization's attacks on the integrity of the Carrier officials responsible for handling this matter - charges of deliberately falsifying records and themselves engaging in dishonest testimony - are equally bootless. There is not a kernel of evidence on this record to support the theory that the Carrier was engaged in some collusive, bad faith attempt to cook the case against this employee.

It is well established that the Carrier has the right and responsibility to make appropriate credibility determinations when faced with conflicting testimony. In this instance, however, based upon the record developed at the first Investigation, it determined on June 26, 1998 that no reliable conclusions could be formed on the hand brake question. It now seeks to support a 30-day suspension on the theory that the Claimant's testimony at the first Investigation was not only incredible but also deliberately false. Those are not easily reconciled insights.

In the absence of substantive proof of later-discovered evidence overcoming it, the Carrier's June 26, 1998 credibility determination is binding on the Board. The Carrier has failed to bear its burden of proof. The claim must be sustained.

AWARD

Claim sustained.

ORDER

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 20th day of December, 2000.