

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23092
Docket Number CL-22643

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Railroad Perishable Inspection Agency

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8605)
that:

(a) The Agency violated the Rules Agreement by unjustly withholding Claimant Paul Colosi out of service from March 9, 1977 through July 31, 1977, since the charges were not substantiated.

(b) Claimant Paul Colosi shall now be entitled to pay for all time lost during the time period mentioned above and his record shall be cleared.

OPINION OF BOARD: Claimant was employed by the Railroad Perishable Inspection Agency (Agency) as a perishable inspector. He was regularly assigned to the Hunts Point Terminal Market, Bronx, New York. The assigned hours were 6:30 a.m. to 3:00 p.m.

On March 11, 1977 Claimant received the following notification:

"Mr. Paul Colosi
213-39 40th Avenue
Bayside, Long Island 11361

Dear Sir:

You are charged with the following offense:

1. Conduct unbecoming an R.P.I.A. inspector.
 - A. Failure to obey direct orders to photograph shipments arriving with defective seal records.

PFE 456827	2-8-77
UPFE 704596	2-8-77
PFE 10580	2-8-77
PFE 11257	2-8-77

"FGEX 12519	2-8-77
SPFE 453400	2-9-77
SPFE 459965	2-10-77
PFE 352187	2-10-77
UPFE 458009	2-11-77
SPFE 453644	2-11-77
UPFE 460627	2-14-77
UPFE 460160	2-15-77
UPFE 452074	2-16-77
SPFE 456175	2-17-77
PFE 351301	2-25-77
SPFE 453889	2-28-77

- B. Failure to obey direct orders to inspect and photograph shipments arriving with defective seal records.

UPFE 451955	2-2-77
UPFE 455699	2-2-77
SPFE 450565	2-20-77
UPFE 455343	2-20-77

- C. Failure to obey direct order to perform tire change on company provided vehicle (C-10017 leased Auto), assigned for your use on the job, January 19, 1977.
- D. Failure to report damage to or complete accident report on company provided vehicle (C 10017 - leased auto) assigned for your use on the job March 8, 1977.
- E. Playing cards in McCabe Inspection Service office 1-31-77 at 10:10 AM while on duty.
- F. Refusal to inspect car SPFE 453393, Potatoes, at Grand Union, Mt. Kisco, New York, 3-2-77, resulting in complaint by Grand Union Produce Manager, and requiring an additional trip the following day to complete inspection.
- G. Received statements from Supervisor J. Monitto of late arrival, poor work habits and immature behavior on duty.

"H. Arrived late for duty 3-9-77 after being advised District Manager would be present.

You were suspended from your duties on March 9, 1977 at 5:00 AM.

An investigation to determine the validity of these charges will be held at the New York District Office, 34 Exchange Place, Harborside Terminal, Jersey City, N.J. on March 16, 1977 at 10:00 AM. Your presence at this investigation is required. You may bring a representative, representatives, or witnesses to testify on your behalf.

Very truly yours,

/s/ D. R. Goss, Jr.

D. R. Goss, Jr.
Manager"

Hearing was held on March 24 and April 5, 1977. Subsequent to the hearing Claimant was notified by letter of April 15, 1977 of his discharge from the Agency's service. Appeal of Claimant's discharge was made on April 24, 1977 by the Organization on behalf of Claimant. By letter of June 14, 1977 the Agency agreed to reinstate Claimant as of July 5, 1977 "on a leniency basis," with seniority and other rights unimpaired, but without compensation for time lost while out of service. Correspondence regarding the Agency's stipulation of "no compensation for time lost" ensued between the Organization and the Agency and ultimately ended with Claimant's returning to service on July 5, 1977, but continuing to process his claim for back pay for the period of his suspension from service.

The transcript of the two-day hearing comprises 122 pages of testimony and some 123 additional pages of evidence. Upon careful review of this voluminous record, we find that the Agency has failed to carry its burden of proof with respect to charges C, E and G. The Agency has, however, proven by a preponderance of evidence on the record Claimant's culpability with respect to charges A, B, D, F and H. Of those charges so proven we find charges A and B to constitute essentially two facets of the same charge; i.e., failure properly "to inspect and photograph shipments arriving with defective seal records." Consequently, the Agency has, in effect, proven only four of the eight (actually seven) charges brought against Claimant.

In light of the foregoing, we find the Agency's assessment of discipline to be excessive and hereby reduce the suspension to sixty (60) days, i.e., from March 9, 1977 through May 8, 1977, and direct that Claimant be reinstated as of May 9, 1977 with back pay for the period May 9, 1977 through July 31, 1977.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent outlined in the above Opinion.

A W A R D

Claim sustained to the extent outlined in the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.