

PUBLIC LAW BOARD NO. 2143

AWARD NO. 239

SEABOARD COAST LINE RAILROAD CO.

VS.

UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim of Yard Foreman H. A. Fralix for pay for all time lost as a result of discipline assessed in Superintendent's letter of September 30, 1977, following investigation held September 15, 1977, and that all reference to discipline assessed by letter of September 30, 1977, be removed from Yard Foreman Fralix's record.

RELEVANT RULES: Mr. Fralix was suspended for 30 days for violation of the following rules:

RULE G-1

Disloyalty. . . will subject the offender to dismissal.

RULE 733

The affairs of the Company must not be divulged nor access of the Company records be committed without proper authority. Information detrimental to the interest of the Company or of its patrons must not be divulged except to proper officers of the Company. Particulars concerning an accident will be furnished to the public only by an officer of the Company or from his authority.

FINDINGS: The discipline under appeal was assessed after formal investigation held on August 26, 1977, pursuant to the following notice to Claimant:

You are directed to report to the office of the Terminal Trainmaster, Bennett Yard, Charleston, South Carolina, 10:00 a.m., Friday, August 26, 1977, for investigation to develop the facts and place responsibility, if any, in connection with conference held at Charleston, South Carolina, August 10, 1977, in connection with the James D. Polin litigation at which time facts were reportedly withheld and for allegedly taking unauthorized photographs on company property.

You are being charged with the possible violation of those parts of Rule G-1 pertaining to disloyalty and concealing facts concerning matters under investigation and Operating Rule 733.

Such investigation was fairly and properly conducted under the applicable rules governing the same. The Company's judgment is based upon the following:

1. Mr. Fralix is a local chairman of the UTU. He admitted that he took pictures of an allegedly defective knuckle and gave such pictures to one of his constituents, Yardman James D. Polin, to aid Polin in the prosecution of a personal injury action against Carrier.

FINDING: We find that this conduct constituted disloyalty to Carrier within the meaning of Rule G-1. The active prosecution of Mr. Polin's lawsuit should have been left to Mr. Polin and his attorneys.

2. There is credible testimony in the record that in a meeting of counsel for the carrier and employees (including Mr. Fralix) who had been subpoenaed by Polin's lawyer, Claimant falsely stated that he had not spoken with any of Polin's attorneys or investigators prior to such meeting.

FINDING: Such misrepresentation constituted an act of disloyalty against Carrier. (It also violated that portion of Rule G-1 reading, "concealing facts concerning matters under investigation"; however, this specific violation was not mentioned in the Letter of Discipline.)

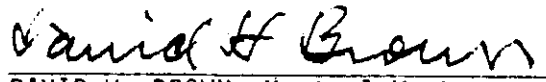
FINDING: We do not support Carrier's finding that Claimant violated Rule 733. Claimant divulged no Company records, nor did he permit access to such. He furnished no particulars of an accident to the public, and the record will not support a finding that he furnished to Polin or his attorneys "information detrimental to the interest of the Company".


Addressing the Organization's expressed concern that Carrier somehow violated the prohibitions in the Federal Employees Liability Act against inhibiting any person from "furnishing voluntarily" pertinent information

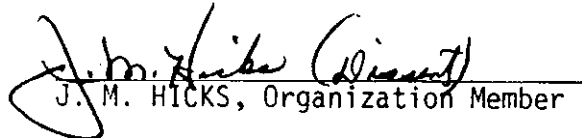
to an employee who is injured on the job, we hold that such protection does not extend to the taking of pictures.

We distinguish this case from that adjudicated in our Award No. 73. In that case the injured employee was in the hospital and his local chairman, while off duty and off the property, merely accommodated an investigator from the out-of-town law firm representing the injured employee by chauffeuring him to a point near the accident scene and waiting in his car while the investigator took measurements and pictures and made notes. Had the local chairman himself done what the investigator did we would have supported discipline against such local chairman. In staying in his car and off the property he obviously recognized a line of propriety.

AWARD: Claim denied.

  
DAVID H. BROWN, Neutral Member

  
W. H. MORSE, JR., Camper Member

  
J. M. HICKS, Organization Member

June 18, 1982