

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

Parties to Dispute: ( System Federation No. 109, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Reading Company

Dispute: Claim of Employee:

1. That under the current agreement Car Inspector L. V. Valetutto was unjustly suspended for five days beginning May 5, 1969 and continuing through May 6, 7, 8 and 9, 1969.
2. That accordingly the Carrier be ordered to make Claimant whole, by paying him the five days he lost, as the result of this unjust suspension.

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 employe 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.

The Claimant has been employed for twenty-seven years by the Carrier and was assigned to the 7:30 A.M. to 3:30 P.M. shift at the time this dispute arose. On his time card for March 18, 1969 the Claimant recorded 7:30 A.M. to 9:30 P.M. and on his card for March 19, 1969 he recorded 7:30 A.M. to 3:30 P.M. The Carrier alleged that the Claimant was not working from approximately 8:00 P.M. on the 18th until 9:30 P.M. and that he was absent from the property from 1:45 P.M. to 3:00 P.M. on the 19th. The Claimant, on the other hand, testified at the hearing that he was working during these hours except for a five minute absence from the property on the 19th. The Claimant, also, testified that his Foreman instructed him on what hours to record on his time card. A careful review of the hearing transcript reveals considerable conflict in the evidence.

The Claimant contends that he was not permitted a fair and impartial hearing on the property. The basic test applied in determining whether an investigation hearing was fair and impartial consistent with the requirements of due process is a question of how it was conducted. Award (Referee Anrod) 4001. When the same Carrier official is the complaining officer, judge, witness and jury the accused employee has little opportunity for a fair and impartial hearing. One cannot expect an objective analysis of evidence from the person with whom you are arguing. A Carrier should be required to appoint a hearing officer who is not directly involved in the outcome of the case. Award (Referee Seidenberg) 4536.

There should be ample opportunity for each side to present their evidence. The Hearing Officer should not reach his decision until all evidence has been fairly presented. Award (Referee Gilden) 6004, Award (Referee Anrod) 4001, Award (Referee Weston) 5223. At the conclusion of all the evidence then the Hearing Officer should make his findings.

In this case the Hearing Officer preferred charges, prosecuted the case, testified and was judge and jury. The danger of this multiple role is clearly indicated by the transcript of the hearing. The Claimant would testify to a transaction and the Hearing Officer would inject a contrary statement to controvert the direct testimony. He even resorted to statements designed to change the testimony of the Carrier's witnesses. Clearly the Hearing Officer in this case attempted to control the outcome of this case rather than restrict his efforts to the Supervision of a fair and impartial hearing.

When there has been a violation of employee due process the remedy is to either sustain the claim or remand the case to the property for a fair and impartial hearing. Prior Awards involving employee due process have sustained the claims. Award 4536, Award 6158, Award 5223. Since the Carrier has made no contention that it is entitled to a remand remedy and in the light of prior awards this claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

*E. A. Killeen*

Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1972.