

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That the St. Louis-San Francisco Railway Company violated the controlling agreement, particularly Rule 35, when they arbitrarily suspended Sheet Metal Worker Raleigh Hicks from service for a period of thirty (30) days beginning June 8, 1979, following investigation held on June 6, 1979.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate Sheet Metal Worker Hicks as follows:
 - a) Restore him to service with all seniority rights unimpaired;
 - b) Compensate him for thirty (30) days at the pro rata rate of pay for being held out of service;
 - c) Make him whole for all vacation rights;
 - d) Pay Hospital Association dues or insurance for all time out of service;
 - e) Pay the premiums for Group Life Insurance for all time out of service;
 - f) Pay him for all holidays;
 - g) Pay him for all sick pay;
 - h) Pay him for all insurance premiums;
 - i) Pay him for all jury duty lost.

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 waived right of appearance at hearing thereon.

An investigation was held on June 6, 1979 to determine whether Claimant was absent from his assigned duties on May 30, 1979 from 8:22 P.M. to 8:48 P.M. He was charged with violating Rule R of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employees particularly that section reading:

"Employes must not absent themselves from their duties ... without proper authority."

Based on the investigative record, Claimant was found guilty as charged and assessed a 30 day suspension. He appealed this disposition.

In defense of his position, Claimant contends that Carrier did not accord him a fair and impartial investigation, consistent with the intent of Agreement Rule 35, since the hearing officer was the same Carrier official, who charged him with the asserted offense, assessed the discipline and declined the claim at the first stage of grievance appellate process. He asserts that this multiple activity prejudiced his rights and vitiated acceptable due process standards. He disputes Carrier's contention that he was impermissibly absent from his duties between 8:22 P.M. and 8:48 P.M. on May 30, 1979 and avers that Carrier was purposely trying to discipline him.

Carrier contends that the investigative trial was conducted properly and in accordance with the judicial standards established by the decisional law of the National Railroad Adjustment Board and that the record demonstrates that he was absent from his duties during the aforesated time period. It asserts that he did not respond to Acting Foreman Oscar I. Claspill's directive delivered over the public address to report to the foreman's office.

In our review of this case, we agree with Claimant's procedural objection. The parties have submitted numerous Awards regarding the parameters and permissible limitations of the hearing officer's role in the conduct of an investigation and they clearly indicate that multiple roles are not improper, if the same Carrier official, who served the notice of discipline, also conducted the investigative hearing and assessed the disciplinary penalty. The Board's case law on this point is consistent and unambiguous. (See Second Division Awards 8147, 5972, 3613, 1795.) In the instant case, however, we have a noticeable variation, which affects Claimant's right to a fair resolution of his claim. The same official who assumed the aforementioned roles also served in the additional role of appeals officer, which we have held improper. In Second Division Award 7119, which we find controlling herein, we stated, in pertinent part that:

"In the instant case we find that H. W. Sanders did not actually testify against Claimant in the hearing but that is literally the only function he did not fulfill in this matter. He activated the investigation, preferred the charges, held the hearing, reviewed the record, assessed the discipline, and denied the appeal. In so doing he fulfilled roles of investigator, prosecutor, trial judge and appellate judge."

Form 1
Page 3

Award No. 8098
Docket No. 8773
2-SLSF-SM-'82

When Superintendent J. H. Hall served as the appeals officer and denied Claimant's petition at the first stage of the appeals process, he impaired Claimant's right to an independent review of his claim. We will sustain the claim.

A W A R D

Claim sustained as per Rule 35 of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of February, 1982.

DISSENT OF CARRIER MEMBERS
TO AWARD 8898, DOCKET 8773
(Referee Roukis)

The Majority in this Award held that the Board's case law concerning the same Carrier official preferring charges, conducting the investigation and assessing discipline is "consistent and unambiguous" in that such "multiple roles are not improper". However, the Majority then reaches the unsupported conclusion that the fact that this same officer served as an appeals officer in some way was prejudicial to Claimant's rights.

A review of the record in this dispute clearly indicates that during the handling of this case on the property, the Employees took no exception to the fact that Superintendent J. H. Hall was the first level officer in the appeals process. In fact, when the Local Chairman appealed Claimant's discipline to Superintendent Hall he took exception to the fact that Mr. Hall acted as "the judge, jury and the executioner" contending that this prejudiced Claimant's rights to a fair and impartial investigation. However, there was no mention in the appeal letter, nor in any other correspondence handled on the property, contending that it was improper for Mr. Hall to hear the initial appeal nor was any request made that an official other than Mr. Hall serve in this capacity. It was only in their Submission to the Board that the Employees took the position that it was improper for Mr. Hall to serve as the appeals officer. Under the well-honed principles of this Board, such exception came too late.

While the Majority in this Award stated that Mr. Hall's function at the first stage of appeals denied Claimant of his right to an independent review of his claim, there is nothing whatsoever to support such an allegation, nor is there anything offered to suggest that a contrary result would have occurred if a Carrier official other than Mr. Hall was the first appeals officer. The reason for such omission in this Award is obvious, there would have been no change in the initial decision inasmuch as the evidence adduced at the investigation clearly established Claimant's guilt of the charge.

What the Majority failed to recognize is that the method of appealing discipline is a creature of the Agreement agreed to and implemented by the negotiating parties. What the Majority is attempting to do, in the guise of interpretation, is to rewrite that portion of the Agreement setting forth the proper line of appeal. In so doing, the Majority clearly exceeded its jurisdiction..

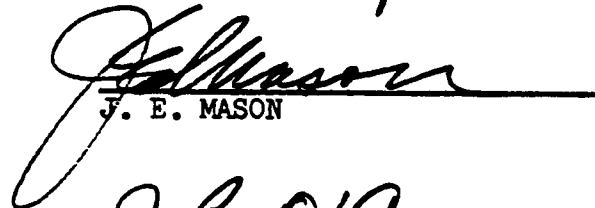
In sustaining the Employees' claim, the Majority cited Second Division Award No. 7119 as authority for its decision. Without in any way condoning the Findings in Award No. 7119, it should be noted that the factual situation in that case was not similar to those present herein. Besides assuming the roles hereinbefore discussed, the Carrier official in Award No. 7119 was extensively involved in the conducting of field and preliminary investigations prior to the claimant in that dispute being granted a formal investigation. There was no such involvement by Mr. Hall in the present case. The record in this dispute clearly establishes that Mr. Hall

afforded Claimant all his procedural rights and conducted a fair and impartial investigation. Furthermore, there is not a scintilla of evidence to suggest that Mr. Hall's denial of the initial appeal was discriminatory or capricious, but rather was based on the investigative record.

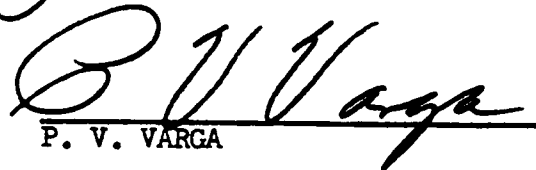
Hence, we dissent:


J. M. FAGNANI


D. M. LEFKOW


J. E. MASON


J. R. O'CONNELL


P. V. VARGA