

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

1. Appeal of discipline of eighteen (18) days actual suspension, time out of service to apply; that the Consolidated Rail Corporation assessed against Radio Maintainer Delmar W. Shiloh on February 7, 1989, Selkirk Yard, New York.

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 employes 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.

The Claimant, a radio maintainer at the Carrier's Selkirk, New York, facility, was assessed an 18 day suspension as a result of an Investigation held on February 3, 1989, for alleged insubordination and violation of Norak Safety Rules.

Upon complete review of the evidence, the Board finds that the Investigation conducted by the Carrier was fair and impartial as required by the Rule. The Carrier was within its rights to withhold the Claimant from service and a reading of the transcript showed that the Organization and the Claimant were able to offer substantial and effective arguments on behalf of the Claimant. With respect to the Carrier's inability to prove that the Claimant was familiar with the Norak Operating Rules, normally this would be a serious charge on behalf of the Organization. However, the Claimant was charged with insubordination. This is well known not only throughout the railroad industry but all industry. The principle being that you follow the lawful instructions of your Supervisor unless there is a clear safety issue involved. If employees are unhappy with their treatment, there is a grievance procedure in place to adjudicate those claims.

Clearly, if the Carrier has proven insubordination, and in fact the Claimant has admitted to insubordinate activity, a suspension of 18 days is appropriate even given the 11 years of service of the Claimant and his unblemished disciplinary record. It may be that the Claimant perceived that the Supervisor was acting in an irrational and arbitrary and capricious manner toward him, and he may have had compelling personal family business. However, workplaces are not debating societies. The Claimant must follow the instructions of his Supervisor unless there is a safety issue involved. If there was a question regarding the overtime pay that could have been resolved at a later date. Therefore, the Board finds that the Carrier has proven the violation in this case. The penalty is appropriate under the circumstances and, therefore, the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1991.