

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12804
Docket No. 12671
95-2-93-2-59

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company

STATEMENT OF CLAIM: "Claim of Employee:

1. That under the current Agreement, Communications Department Equipment Installer F. J. Schad was unjustly treated when he was suspended from service on October 9, 1991, prior to investigation or formal hearing, and was dismissed from service on November 18, 1991 following investigation for alleged violation of General Rules 600 and 607, Rules and Instructions for the Maintenance of Way and Structures and Engineering, Southern Pacific Transportation Company (Western Lines).
2. That, accordingly, the Southern Pacific Transportation Company be ordered to restore Equipment Installer F. J. Schad to service with all rights unimpaired, including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions and the loss of wages to include interest at the rate of ten percent (10%) per annum."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

At the time of the incident precipitating this dispute, Claimant was a Communications Department Equipment Installer in Eugene, Oregon. On October 8, 1991 Claimant was directed to report for a formal investigation concerning an alleged verbal altercation between him and his supervisor. In addition, by letter of October 9, 1991, Claimant was notified as follows:

"Since your return to work after the alleged incident on October 4, 1991, your demeanor and actions have not been appropriate for the workplace. With regret, I am removing you from service effective October 9, 1991, in connection with the alleged incident of October 4, 1991, for the safety of yourself, co-workers and supervisors."

In that letter, Carrier also provided the name and address of Carrier's Employee Assistance Counselor.

Following the investigation, Claimant was notified that he was dismissed from Carrier's service. The Brotherhood protested Claimant's dismissal in a letter dated December 2, 1991. That claim was denied and subsequently processed in the usual manner, up to and including the highest carrier officer responsible for such matters. Following conference between the Parties on March 11, 1993, the matter remained in dispute.

The Brotherhood has raised an objection to Carrier's decision to withhold Claimant from service pending the investigation. In light of the gravity of the initial charges and Carrier's good faith concern regarding his subsequent behavior, it was not unreasonable for Carrier to suspend Claimant prior to the investigation. In addition, the Brotherhood protests that Claimant was not afforded a fair and impartial hearing. A careful reading of the lengthy transcript does not support such a position. The hearing officer gave Claimant and Claimant's supporting witnesses more than ample latitude in presenting his defense.

With respect to the merits of the case, the Brotherhood alleges that Carrier has failed to meet its burden of proof, since the only Carrier witness against Claimant is his supervisor. The Brotherhood also suggests that the charges were a result of a "hidden agenda" and "malice and forethought" (*sic*) on the part of the supervisor. After reviewing the record, this Board finds no evidence of entrapment. Nor does the fact that the supervisor is the only witness testifying against Claimant fatally undermine the Carrier's position. Those witnesses testifying for Claimant alluded to prior difficulties each had had with this supervisor, but none provided probative testimony regarding the incident at hand. Accordingly, the case turns upon the directly contradictory testimony of the sole protagonists.

This Board has long held that credibility issues are generally to be regarded as within the province of the Hearing Officer, and the testimony of one witness may be sufficient to establish a preponderance of the evidence. Third Division Awards: 21054, 25102, 24991, 25873, 25316, 29077, 29412. Absent a showing of malicious predisposition on the part of the supervisor or the hearing officer, this Board finds no basis for overturning Carrier's assessed discipline.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

National Railroad Adjustment Board
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.