

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12808
Docket No. 12679
95-2-93-2-74

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

(Brotherhood of Railway Carmen Division -
(Transportation • Communications International
(Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (L&N)

STATEMENT OF CLAIM: "Claim of the Brotherhood that:

1. Carrier violated the current controlling agreement when Carman T. L. Conway was unjustly suspended 30 working days as a result of investigation held on September 20, 1991.
2. Carrier shall now compensate Carman T. L. Conway for all lost wages with 6% annual interest and expunge his record with all rights unimpaired as a result of the 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 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.

Claimant holds a regular assignment as a carman on the Louisville and Nashville Railroad Company (CSXT) at Mobile, Alabama. On September 12, 1991, Claimant was called in to fill a first shift Trainyard Car Inspector job vacancy. At the end of his shift, Claimant and the Trainmaster had a verbal exchange concerning unlocking tracks so the shop cars could be switched out. As a result of that exchange, Claimant received the following Notice of Investigation dated September 13, 1991:

"You are directed to attend an investigation which will be held in the Conference room at Sibert Yard office on Friday, September 20, 1991 at 9:00 AM (Central Standard Time) to determine your responsibility, if any, in connection with engaging in insubordination in that you refused Trainmaster M.A. Murray's instructions to get the north end car inspector to take the Blue Flag and Lock off of Track #19 on the North end of Sibert Yard, Mobile, AL, at approximately 3:15 PM (Central Standard Time) on Thursday, September 12, 1991."

Following the hearing, Claimant was notified that he was found guilty of the charge and was assessed 30 working days' suspension. Claimant's discipline was appealed and processed up to and including conference between the Parties on September 4, 1992, after which it remained unresolved.

At the outset, the Organization maintains that Carrier failed to comply with Rule 34 of the Agreement between the Parties; to wit, Claimant was not afforded a "fair hearing" as stipulated in that Rule. A review of the transcript does not support the Organization's position. It is apparent that Claimant understood the charges and was able to formulate an informed defense. Moreover, there is no indication on the transcript before the Board that the Hearing Officer was other than objective.

With respect to the merits of the claim, the Organization maintains that, irrespective of the verbal exchange, since Claimant actually performed the work at issue he cannot be found to have been insubordinate. Carrier disputes that contention, and notes that Claimant's performance of the task at issue is moot in view of his initial insubordination. The Organization also contends that Carrier has not met its burden of persuasion, since the determination of credibility among directly opposing positions was made by the Hearing Officer.

The Board is in accord with Carrier regarding the irrelevance of actual performance of a task following an act of insubordination. Employees are not free to respond to orders in a disrespectful or insubordinate manner simply because they intend to follow the orders in the end. With respect to the determination of credibility, it is a long established tradition on this and other Boards that we will not normally substitute our judgement of credibility between opposing witnesses for that of the Hearing Officer, unless there is compelling evidence in the transcript to support our doing so. In the instant case, there is insufficient evidence to contradict the Hearing Officer's determination of credibility.

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AWARD

Claim denied.

ORDER

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.