

The Fourth Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(American Railway and Airway Supervisors Association:  
( A Division of TCU  
PARTIES TO DISPUTE: (  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 25, when as a result of a hearing held January 7, 1987 Mr. Rasso, Car Foreman was assessed discipline in the form of five (5) days actual suspension. Said discipline is unjust, unwarranted, and an abuse of Carrier's discretion.
2. As a result of this violative action, Carrier be required to rescind the discipline assessed and to compensate Foreman for all lost wages and benefits.

FINDINGS:

The Fourth 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.

At the time of the occurrence giving rise to the dispute herein, Claimant was employed as a Car Foreman at Carrier's California Coach Yard, Chicago, Illinois, and, in that position was responsible for the maintenance of passenger coaches used in Carrier's suburban commuter service.

On December 5, 1986, Claimant was instructed to appear for formal investigation on December 22, 1986, on the charge:

"Your responsibility for failure to properly perform your duties; namely following up on car 7734 which was placed in the exception book on December 2, 1986."

The investigation was postponed and conducted on January 7, 1987. On January 16, 1987, Claimant was assessed discipline of five days actual suspension, beginning Monday, January 19, 1987. A copy of the transcript of the investigation has been made a part of the record.

Before discussing the merits of the dispute, the Board is faced with the contention of the Organization of alleged procedural errors in the appeal process on the property. In its Submission to the Board the Organization contends that the same Carrier officer issued the charge against Claimant, issued the notice of discipline, and was the first level appeal officer, thus depriving Claimant of proper appeal procedure. We have reviewed the correspondence covering the handling of the dispute on the property, and we find that no procedural issue was raised concerning the appeal procedure accorded Claimant. This Board, being an appellate tribunal, may only consider issues raised by the parties in the handling of the dispute on the property. New issues and new defenses may not properly be raised for the first time before the Board. The procedural contention of the Organization is rejected.

As to the merits of the dispute, the issue of substantial evidence in support of the charge against the Claimant gives the Board serious concern. We have reviewed the transcript of the investigation, and it is the conclusion of the Board that Claimant did everything that could reasonably have been expected of him under the existing circumstances. We do not find substantial evidence in the investigation to support the discipline assessed Claimant.

The Claim will be sustained, with compensation for Claimant computed in accordance with Rule 25(e) of the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1989.