

**Award No. 1578**

**Docket No. 1521**

**2-IC-CM-'52**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (CARMEN)**

**ILLINOIS CENTRAL RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That under the current agreement Car Inspector I. H. Ivy was unjustly held out of service on October 2, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1951, and that accordingly the carrier be ordered to compensate him for wage loss on the aforesaid dates.

**EMPLOYEES' STATEMENT OF FACTS:** I. H. Ivy, hereinafter referred to as the claimant was employed at Memphis, Tenn., working as a car inspector Monday through Friday, from 12 Midnight to 8:00 A. M., with rest days of Saturday and Sunday.

On Saturday, September 15, 1951, between the hours of 6:00 and 7:00 P. M., the inspector foreman ordered the claimant to report for work at 12 Noon on Sunday, September 16, 1951. At 11:00 A. M. September 16, 1951, Mrs. Ivy (the claimant's wife) telephoned the inspector foreman's home to report that the claimant was in jail and could not report for work. The foreman's wife took the message for the purpose of transmitting it to the foreman.

When the claimant reported for work on October 1, 1951, he was ordered to report to Dr. Francis, company Doctor for a physical examination. He was examined on October 2, 1951. On returning to the master mechanic's office, with the Doctor's report, he was handed a letter ordering him to report for a formal investigation at 1:00 P. M., October 3, 1951, which was later postponed until October 9, 1951, copy submitted herewith, as employees Exhibit A.

The investigation was held on October 9, 1951, copy of this investigation transcript is submitted as employees Exhibit B. Due to the criminal court proceeding against the claimant, Attorney R. G. Draper was present at the hearing to protect him against any matter that might be involved later in the trial and was not there for the purpose of representing the claimant under the provisions of Rule 39 which is supported by statement of Attorney R. G. Draper submitted herewith and identified as Exhibit D.

The claimant was not allowed to return to work until October 23, 1951.

The agreement effective April 1, 1935, as subsequently amended is controlling.

murder charge against him was not arbitrary, capricious, or in bad faith and that it is not the purpose of the Division to substitute its judgment for that of the carrier in this matter. Accordingly, we respectfully request the Division to deny Mr. Ivy's request.

**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 employees 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.

The parties to said dispute were given due notice of hearing thereon.

On Saturday, September 15, 1951, at about 6 P. M., Car Inspector Ivy accepted a call from his foreman to report for work at noon the next day, September 16. On the night of September 15, Ivy got involved in an altercation off carrier property during which he suffered rather severe personal injuries and as a result of which he was lodged in jail on a charge of murder. Being unable to report for work on the sixteenth as previously arranged for, he telephoned his wife Sunday morning asking her to get in touch with his foreman. His wife called the foreman's home and, finding that the foreman was at work, asked the latter's wife to notify him. The foreman received word of Ivy's inability to report for work at about noon. He called another worker.

On October 1, 1951, Ivy, having been released from jail on bond and having been approved as to physical condition, reported for work. The next day he was notified to appear for formal investigation on October 3, on charge of having violated Rule 23 of the parties' agreement (quoted previously) and of behaving in a manner that had subjected the carrier to criticism and loss of goodwill. At the request of Ivy's representatives the hearing was postponed until October 9.

After the hearing, the carrier on October 21, 1951, notified Ivy that he should resume his position pending disposition of the criminal charge against him. Ivy thus had received a disciplinary action that amounted to a suspension for the days mentioned in the claim.

Our task here is to find answers to two related questions: (1) Did the carrier comply with the provisions of Rule 39 on Discipline in the parties' agreement? (2) Did employee Ivy comply with the provisions of Rule 23, one of two rules in the agreement on absence from work? Answering these questions requires us to determine from the record whether Ivy was informed of the precise charges against him, whether he was given sufficient opportunity to obtain and present witnesses and other evidence in his own behalf, whether the hearing on the charges was conducted fairly, and whether he attempted to comply with his obligations under the agreement. Under our rules of long standing, we do not presume to overturn the carrier's disciplinary decision unless we find probative evidence of arbitrary, prejudicial, and capricious action by the carrier or unless we find evidence that the discipline imposed was unduly harsh in terms of the proven offense.

We do not think that the petitioner's representatives have sustained their burden of showing that the hearing accorded Ivy was unfair. But we do find persuasive suggestions in the record that Ivy did not fail to comply with the essential meaning and intent of Rule 23's provisions. And we must rule, therefore, that his suspension represented an unfair and prejudicial conclusion from the evidence adduced at the hearing.

Rule 23 requires that no employe shall be absent from work for any reason unless he first obtains permission from his foreman. But this require-

ment contains two exceptions—one in the words “if possible,” and the other in the provision that if the employee is sick, he shall notify the foreman as soon as possible.

The record establishes that on the day (September 16, 1951) he was supposed and had agreed to report for work, Ivy was both physically hurt and in jail. The mere fact of incarceration suggests that it may have been impossible for him to get directly in touch with the foreman. However, this fact does not prove such impossibility. The record is void of compelling evidence on this point. But the record does show that Ivy telephoned his wife about his inability to work and that the message was relayed to the foreman who called a substitute employee. And it is fair to presume that “permission” for Ivy to be absent was implicit in the circumstances.

In respect to the exception involving sickness, the record establishes that Ivy was severely enough injured to justify our characterizing him as “ill”. In such case notification as soon as possible is allowable under the rule; and the foreman’s approval of the absence is not required.

We come finally to that part of the carrier’s charge against Ivy which mentions conduct prejudicial to the carrier’s reputation. We do not find that the suspension is justified on this ground. Nowhere in the record is it stated that the carrier has a rule that an employee’s behavior must be proper during non-working hours off carrier property; improper conduct will be considered to besmirch the carrier’s good name; and such improper conduct will be deemed a reason for disciplinary action. Nor does the record show that such a rule, if it exists, has been transmitted to the employees.

We think the claim must be upheld.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1952.