

Award No. 1875

Docket No. 1723

2-C&EI-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Carmen)**

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman Helper John A. Talbott was unjustly suspended from the service on April 27th and subsequently unjustly dismissed from the service on May 9th, 1953.

2. That accordingly the Carrier be ordered to reinstate this employe in the service with all rights unimpaired and compensate him for the wage loss resulting from said suspension and dismissal retroactive to April 27th, 1953.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper J. A. Talbott, hereinafter referred to as the claimant, was employed as such by the carrier in its Oaklawn Freight Car Shop, Danville, Illinois, since about November, 1951 and his assignment of hours was from 7:00 A. M. to 3:30 P. M., with a lunch period of thirty minutes, Mondays through Fridays, with rest days Saturday and Sunday.

The carrier summoned the claimant by written notice dated Saturday, April 25, 1953, to stand trial at the office of the new car shop at 2:00 P. M., Wednesday, April 29, 1953 on the charges contained in copy thereof submitted herewith and identified as Exhibit A. The hearing proceeded accordingly and a copy of the transcript thereof is submitted herewith and identified as Exhibit B.

The carrier made the election by letter dated Saturday, May 9, 1953, to remove or dismiss the claimant from the service and copy thereof is submitted herewith and identified as Exhibit C.

This dispute has been handled as provided for in the current agreement as revised effective September 1, 1949 with the result that the highest designated official by the carrier to handle such appeals has declined to adjust it.

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 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, April 25, 1953, carrier issued notice charging claimant with violation of the agreement by virtue of allegedly leaving his job without permission during the morning of April 24. When claimant returned to work Monday morning, April 27 (Saturday and Sunday being his rest days), he was promptly suspended. Claimant Talbott was employed as a carman helper in the Oaklawn Car Yard, Danville, Illinois, with assigned hours from 7:00 A. M. to 3:30 P. M. Hearing on the property was held April 29 and notice of dismissal was issued May 9. Organization contends claimant's pre-hearing suspension was improper and his subsequent dismissal unjust. It requests reinstatement with all rights unimpaired and compensation for wages lost retroactive to the date of suspension. Carrier responds the evidence fully supports the charge of a rule infraction and asserts the penalty imposed was a valid exercise of its discretion.

The principal agreement provision pertinent to this controversy is Rule 14, which reads in part:

"An employee wishing to be absent from work less than thirty (30) days, must obtain permission from the foreman whenever practicable to do so, and foreman will endeavor to grant same when requested."

The record discloses that at 9:00 A. M. on Friday, April 24, claimant went to the office and signed out his time card for 11:00 A. M. He then resumed work but at about 11:04 A. M. returned to the office where he found his time card missing from its usual location but lying, instead, on his foreman's desk. Claimant testified at the hearing: "I assumed he (the foreman) knew I was going home, as my card was on his desk." (Page 10 of hearing transcript, organization exhibit B.) Claimant thereupon left for the remainder of the day. At the hearing he advanced a personal reason for his early departure but said reason need not be described here. It was also developed at the hearing that the time card had in fact been placed on the foreman's desk by a clerk, presumably for the foreman's attention.

It must be concluded from the foregoing that claimant did not obtain the foreman's permission as required by Rule 14. Claimant concedes he was familiar with this requirement, although he denied having seen the rule itself prior to the incident in question. The evidence discloses the foreman was available in the yard that morning had claimant endeavored to obtain the required permission. There was no emergency situation making it necessary to leave immediately without securing permission. And claimant was not entitled to substitute the above-quoted assumption for the foreman's express approval.

The charge of having violated Rule 14 is thus established but we think the penalty of dismissal is excessive under the circumstances of this case. While claimant's action cannot be condoned, and while carrier is fully justified in requiring compliance with said rule, we are of the opinion that a suspension equivalent to the time already lost is certainly sufficient discipline.

It has been noted petitioner protests claimant's suspension prior to the hearing. Rule 30 of the agreement provides that a prehearing suspension may be invoked in "proper cases." We are unable to find that carrier acted improperly in this regard.

AWARD

Claimant shall be reinstated in the service with all rights unimpaired, but without compensation for wages lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.