

Award No. 4983

Docket No. 4917

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Helper Tentative, J. W. Kellogg Jr. was unjustly dealt with; when suspended from the service of the Chesapeake and Ohio Railway Company from June 1 through 15, 1964, eleven working days.

2. Accordingly, the Carrier be ordered to compensate Carman Helper Tentative, Kellogg eleven days, eight hours each day beginning June 1, 1964 at the carman welder applicable straight time rate.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper Tentative, J. W. Kellogg Jr. hereinafter referred to as the claimant, was regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its Russell Car Shops, Russell, Kentucky on the second shift, as a carman tentative welder, with a work week Monday through Friday, rest days Saturday and Sunday.

The Russell Car Shops is a car building shop, operates on a predetermined quota basis, i.e., a specified number of new cars and/or rebuilt cars are produced each day. Under date of April 28, 1964 carrier's shop superintendent, W. O. Bradley addressed the following letter to the claimant:

"Russell, Kentucky
April 28, 1964 t
B-117-2-K

Mr. James W. Kellogg Jr. No. 102038
Freight Car Repairer Welder
Russell Car Shops, Russell, Ky.

Dear Sir:

Arrange to attend investigation to be held in the office of Shop Superintendent, Russell Car Shop, 2:30 P.M., May 5, 1964.

unduly restrict the right of management to efficiently operate its railroad. Claimants were given a hearing at which they had full opportunity to be heard and to produce witnesses. The action of the carrier appears to have been motivated by necessity and not by action that could be deemed arbitrary or capricious. We can find no reason for interfering with the action of the carrier."

THIRD DIVISION AWARD 10096 (Referee Rose)

This dispute involved a PBX Operator who was disciplined by suspension as a result of leaving duty without permission one hour and ten minutes prior to quitting time. The board stated:

"This Board has repeatedly refused to reverse the Carrier's decision in discipline cases in the absence of evidence that such action was capricious, arbitrary, or without just cause. There is no such proof in the record before us. For that reason, the claim must be denied."

THIRD DIVISION AWARD 8832 (Referee Daugherty)

A section foreman who left his gang before close of work without permission was dismissed. Claim for reinstatement denied, the board's opinion reading in part:

". . . this offense was so serious that the judgment of dismissal cannot be deemed an abuse of Carrier's discretion. No element of arbitrariness, unfairness, or unreasonableness, can be found in Carrier's decision."

What was said there is equally applicable here. Claimant Kellogg was guilty of falsifying his time card and absenting himself from duty without permission. Carrier was fully justified in disciplining the offender by suspending him from service for 15 calendar days.

The claim should be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant, an employe with seven months service, reported on April 24, 1964, to his regular position on the 3:30 to 11:50 P.M. shift. His foreman gave him his time card shortly after he reported to work and Claimant filled it out and left it in the foreman's box. Shortly thereafter, at about 4:30 P.M., he was taken from his regular work and instructed to build knee-braces. The hours of the latter assignment are from 3 to 11:00 P.M. and

when that shift ended, Claimant left with the employe who regularly worked on kneebraces instead of returning to his regular assignment that still had over 30 minutes to go.

On the basis of these facts, Claimant was found guilty of falsifying his time card and absenting himself from duty without permission.

The first charge, that concerning falsification, is not supported by the record and it does not seem inappropriate to remind Carrier that a charge of so serious a nature should not be levelled against an employe unless there is concrete evidence to support it that does not require mere conjecture and assumption to bridge material gaps. There is no evidence that Claimant intended to defraud Carrier or falsify records and the incident would rather appear to be an indication that management should tighten up time card practices by appropriate revisions and instructions.

That Claimant left work before his regular quitting time is, of course, clear. While he should have first checked with a supervisor before going to the locker room at 11 P. M., his limited experience as a Carrier employe and the temporary change in his working routine are extenuating circumstances that make a fifteen day suspension excessive and arbitrary.

The facts of this case warrant at the most a formal reprimand as to absenting himself from duty without permission. Accordingly, the claim will be sustained subject to the exception that Carrier may issue the aforementioned reprimand.

AWARD

Claim sustained subject to the exception that Carrier may issue a formal reprimand to Claimant as to absenting himself from duty without permission on April 24, 1964.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION .

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1966.