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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6437
Docket No. 6298
2-GM&O-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: { System Federation No. 29, Railway Employees'
 { Department, A.F. of L. - C. I. O.
 { (Carmen)
 { Gulf, Mobile and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carman Lincoln LeFlore was improperly dismissed from service with the Carrier effective June 25, 1971.
2. That accordingly, the Carrier be ordered to restore Carman LeFlore to service with all rights unimpaired and compensated for all time lost including payment of all fringe benefits with six (6) percent interest on wages.

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 waived right of appearance at hearing thereon.

Claimant was employed as temporary carman and had two and one half years service with the carrier. His shift was from 11 P.M. - 7 A.M. Sometime between 3:30 A.M. and 5:00 A.M., claimant left his work without notice to anyone. Claimant is twenty years of age. Claimant was held out of service that afternoon; an investigative hearing was held after which claimant was dismissed from service.

The Organization argued that the dismissal was arbitrary and the punishment excessive. It was argued that mitigating circumstances were not considered; the hearing was not fairly conducted; and a written statement of claimant's prior lateness was admitted into the record over objection of his representative but that the objection is not in the record of the testimony.

The carrier argued that there was substantial evidence produced at the hearing, sufficient to justify dismissal which was neither arbitrary nor capricious; also that the hearing was a fair one.

At the hearing, claimant stated that at about 5:00 A.M., he had stomach pains so severe that he had to go home. He said that he took medicine, locked himself in his room so that he would not be disturbed and awoke about 1:00 P.M. He said that his sister told him that there had been two telephone inquiries and that, "— I was pulled out of service, so I feel there wasn't any use calling them."

There was disagreement at the hearing between claimant and supervisors over the exact time that work was performed by him and what time he left the yard. At the end of the hearing a note from the Trainmaster to the General Car Foreman was read into the record. The note dated almost one year earlier censured claimant for frequently reporting to work late. Claimant's representative at the hearing in defending claimant made the following statement: "My line of defense for this man is this. This Yardmaster has his hands full with the engines and the men, and these car men work unsupervised. Mr. Le Flore is a young man and lacks the training of many employes. He will have to be told of his responsibility and the things that he is required to do, and I feel that he will do it." When asked if there was anything else, he answered: "No, I believe that is the line of defense that I want to use."

At the hearing, the Third Shift Yardmaster stated that he tried to locate claimant at about fifteen or twenty minutes to five, saw that claimant's car was gone from the parking area, tried to locate him again about 5:00 A.M. and then called the General Car Foreman. The Car Foreman stated, as a witness, that he was told about 6:35 A.M. that the General Foreman wanted him to look for claimant but that no one had information. The General Car Foreman, who conducted the hearing, stated during the hearing that he telephoned claimant's home at 5:30 A.M., at 8:00 A.M., at 10:00 P.M. and at 1:10 P.M. At the last call, when he could get no information, he told claimant's sister that claimant was out of service. Claimant did not return the call to explain his leaving work without notice to anyone, or in response to the General Foreman's message.

It is clear that there was no objection to the suspension from service prior to the hearing or to the notice of hearing. At the hearing both claimant and his representative answered, when asked, that the investigation was fair and unbiased.

The note of one year earlier regarding lateness should not have been read into the record. It may be a factor in fixing a penalty but not in arriving at the result. Accordingly, the note was disregarded in our review of the hearing.

The claimant did not deny that he had left work early without notifying anyone then or later. Whether or not he left at 3:30 A.M. or 5:00 A.M. is not material. We give the claimant the benefit of the doubt that he was locked in his room asleep until after 1 P.M. although his sister thought he was not home. Claimant's conduct cannot be excused. If he could drive home to take medicine, he could have told someone, made a phone call to someone, or left a message for his sister to do so. There is substantial evidence to support the conclusion reached by the hearing officer and we will not disturb his decision, Second Division Award No. 6240, and prior Awards cited therein.

The purpose of a hearing is to get at the facts while at the same time giving claimant and his representatives full opportunity to state their case, produce evidence and question witnesses. In some Awards a formal type of hearing is suggested, in a dignified atmosphere. Other Awards have approved a more informal approach to the facts. This hearing was conducted informally. Those present were on a first name basis, with everyone contributing to the whole picture by telling what he knew about it. These were men who worked together. This gave claimant and his representative the opportunity to understand what it was all about and to respond. In this case, it was a healthy atmosphere in which to get everything on the table. The hearing was conducted fairly and without prejudice to the claimant.

In considering the penalty we are confronted with the admission of wrong doing by the claimant. The "line of defense", was to consider the mitigating circumstances and, in effect, to exercise leniency.

The result of leaving his work unattended on his shift was serious. Claimant was the only carman on the third shift. Trains were delayed. Carmen had to be called off other work and the first shift men were delayed in getting at their work in order to finish off the third shift work. The offense is serious enough to justify the penalty which would be neither arbitrary nor capricious.

On the other hand, claimant testified that he should have notified somebody, "—but I was out of my head, the only thing I was thinking of was my medicine, to ease the pain." He was twenty years old with two and one half years service. He was promoted to temporary carman because the carrier had difficulty finding qualified men. He may not have been ready for full responsibility, working alone on his shift. In extreme pain, the full sense of responsibility that goes with maturity may have been lacking. There is no evidence that he deliberately committed a wrong. Except for latenesses noted one year earlier, there is no evidence that he was a persistent violator. In this case, mitigating circumstances are present. The record points to the fact that this young man was doing a grown man's job satisfactorily. He should have another chance without, however, finding fault with the carrier's decision. This can be accomplished by reinstating claimant at this time with no back pay.

A W A R D

Item No. 1 of claim, denied.

Item No. 2 of claim disposed of according to findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

ted at Chicago, Illinois, this 11th day of January, 1973.