

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6616
Docket No. 6504
2-P&PU-FO-'74

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Peoria and Pekin Union Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, Laborer Ellis Garmon was unjustly suspended from the services of the Peoria and Pekin Union Railway Company for thirty calendar days effective September 23, 1972.
2. That accordingly the Peoria and Pekin Union Railway Company be ordered to compensate Laborer Ellis Garmon for all time lost as a result of the unjust suspension.

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 notified by a letter dated September 19, 1972 that an investigation would be held at 2:00 P.M. on September 20, 1972 in connection with Claimant's alleged failure to comply with instructions to mop the office on September 18, 1972. After the hearing the Claimant was suspended from service for 30 calendar days.

Rule 29 provides that in discipline cases a hearing shall be promptly scheduled and that at "a reasonable time prior to the hearing employe and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of witnesses." The alleged act of insubordination occurred on September 18, 1972. He was advised by letter dated September 19, 1972 that the hearing was scheduled at 2:00 P.M. the next day.

While the hearing was promptly scheduled, it was, perhaps, too prompt. The record does not show when Claimant received the September 19 letter. A lapse of only 24 hours, if formally established, may be a "reasonable time" in some cases. Since it has not been so established here it is doubtful if it constituted a reasonable time.

In any event, Carrier did not notify Claimant's "duly authorized representative" of the hearing on September 20. This is admitted. The mere fact that the "duly authorized representative was at the hearing and participated in the proceedings is no license to the Carrier to violate the provisions of Rule 29. Carrier may not ignore its contract obligations with impunity. And it is no valid excuse that the Carrier did not know the name of Claimant's representative. The notice of September 19, 1972 was faulty.

Furthermore, it is doubtful that the Carrier has presented substantial evidence that the Claimant was guilty of insubordination. If anything a reasonable misunderstanding existed. An employee with more than 30 years of service and with no established prior infractions of any rules, is not very likely to deliberately refuse to follow instructions. The suspension penalty was not justified.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of January, 1974.