

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: ( System Federation No. 91, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Upgraded Carman Apprentice R. W. Smith was dismissed from service in violation of the current agreement on March 17, 1975, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
  - (a) Restore him to service with seniority and all employee rights unimpaired.
  - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
  - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from service.

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, R. W. Smith, was working as an Upgraded Apprentice Carman at the time of his dismissal from service in March 1975 for an incident occurring on February 18, 1975. There is virtually no dispute relative to the facts of this case. On the morning of February 18, 1975 he called Carrier's office and advised that he would be late to work because his mother was ill and he had to take her to the hospital. As he later admitted at his hearing

and investigation on February 25, 1975, however, the real reason for his absence from work that day was to appear in Police Court to answer charges stemming from his arrest several days earlier. The details and outcome of his court appearance are not relevant herein, since the reasons for his discharge by Carrier are as contained in a Notice dated February 20, 1975 as follows:

"On February 18, 1975, you were absent from your assigned duties (5) hours. You, in fact, called in, stating that you were taking your Mother to the hospital, this being 'your' reason for being absent.

It is known at this time, that you did, in fact, falsify your reason for being away from your assigned duties on the date of 2-18-75. Therefore, you are hereby charged with falsifying your absence of (5) hours on 2-18-75 and an investigation of these charges will be held February 25, 1975, 10:00 a.m., 3rd Floor Office Building, Mr. N. R. Bishop's Office.

Please arrange to be present with any witnesses and representation, if desired."

Apparently unknown to Claimant, the details of his arrest were printed in the local newspaper of general circulation and this was brought to the attention of his Division Manager at or about the time Mr. Smith reported his anticipated absence from work under Rule 22. Rule 22 reads as follows:

"An employe detained from work account of sickness or other good cause shall notify his foreman as early as possible."

At his hearing and investigation Claimant was belatedly forthright in his explanation for his absence:

"Q. Please give us what information you can in this case.

A. I was in Police Court and I called in giving a reason for being absent for 5 hours. The reason I gave was that I was taking my mother to the hospital. I gave this reason because at the time I was ashamed and so embarrassed at where I was. It's not that I meant to break a rule or hurt the company in any way. It's just that I gave that reason at that time. If the company wishes to hold me in service, I promise that something like this will not happen again.

Questioned by J. J. Keefe - Staff Assistant

Q. Mr. Smith, did you admit the following day, February 19 to Mr. Bishop and in the presence of L. A. Masticola that you did falsify your excuse for being late that morning?

A. Yes

"Questioned by L. A. Masticola - Local Chairman

Q. Mr. Smith, on the morning of 2-18-75 when you called in, did you state what time you'd be to work?

A. Yes. At 12:00 p.m.

Q. Did you come to work after dinner?

A. Yes."

There is no question that Claimant is culpable of precisely the misconduct with which he was charged. He did falsify his excuse for being late. Nor from what we know of this particular record did he have a "good excuse" for his absence. His misconduct cannot be condoned and Carrier was within it's rights to discipline him. But in the particular facts and circumstances of this case, the maximum discipline of dismissal is inappropriate. The discipline of suspension without pay should serve to notify Claimant of the wrongfulness of misconduct and prevent any recurrence. We find that he should be reinstated in the service of Carrier with seniority and other rights unimpaired, but without compensation for time lost.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 31st day of January, 1978.

