

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

Parties to Dispute: ( System Federation No. 7, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern Inc. improperly placed an entry of censure on the personal record of Denver Colorado Carman Samuel Gordon as a result of formal investigation held on June 9, 1975.
2. That the Burlington Northern Inc. be ordered to remove entry of censure from the aforesaid employes' personal record.

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 Samuel Gordon's scheduled reporting time is 7:00 a.m. On Saturday, May 24, 1975, Claimant called his foreman at 7:45 a.m. to advise him that he was detained from work on account of personal business.

Since his position could not be filled, he was told to report and did so at 8:25 a.m.

On that same day, a letter was sent to Claimant to appear at a formal investigation on June 9 as to his responsibility for failure to report for duty at the designated time and place as prescribed under Rule 665 of the Carrier's Safety Rules. Following the hearing, on July 1, 1975, an entry of censure was placed in claimant's personal record.

Petitioner's claim is to have the censure removed, on the grounds that Claimant complied with the provisions of Rule 16(e) of the Agreement:

"(e) An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

Petitioner and Carrier, on the record, held opposing views as to the primacy and relevance of Carrier's Rule 665 and Rule 16(e) of the labor Agreement.

Petitioner also raised as an issue certain procedural defects in that the hearing officer preferred the charge, conducted the investigation and issued the decision. We do not agree that this constitutes reversible error, based on the record in this case.

Petitioner holds that Rule 16(e) supersedes Rule 665 and that Claimant complied with Rule 16(e) when he called his foreman and was authorized to report for work. Permission to come to work, it is maintained, constitutes "proper authority" as required by the rules.

Carrier, on the other hand, asserts that the charge was based on noncompliance with Rule 665, and not Rule 16(e); and that it has a right to establish and enforce rules for the protection and safety of passengers, shippers, employees and company property. Carrier construes Rule 16(e) as an administrative rule, which requires employees to notify their foreman prior to the starting time of their shift so that a replacement can be secured before the shift starts. Rule 16(e), in its view, does not excuse an employee's responsibility to get to work on time.

At the hearing, Claimant's foreman acknowledged that Claimant had followed standard procedure when he realized he would be late in reporting for work, and that he had contacted the car foreman as required by the agreement. The Hearing Officer (Transcript, p. 21) confirmed the foreman's statement.

We find that Claimant did call in to report his tardiness as soon as he was able; that no one else was called to work in his place; that he was told to report for work and did so. We are of the opinion that Claimant complied with the rules and that the entry of censure is not warranted under the circumstances herein described, and should be removed from his personal record.

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 Bruschi - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1978.