

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association  
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{  
{ Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 17, 32, and 33 when they unjustly dismissed Sheet Metal Worker Al Meyer, Jr. from their service effective February 19, 1976.
2. That accordingly, the Missouri Pacific Railroad Company, who returned Sheet Metal Worker Al Meyer, Jr. to service on April 19, 1976 with all seniority rights unimpaired, now be ordered to compensate him as follows:
  1. Compensate Claimant for all time lost, three hundred forty-four (344) hours.
  2. Make Claimant whole for all vacation rights.
  3. Pay Hospital Association dues for all time out of service.
  4. Pay the premiums for Group Life Insurance for all time out of service.
  5. Pay Claimant for all holidays.
  6. Pay Claimant all sick pay.
  7. Pay Claimant for all insurance premiums.
  8. Pay Claimant for all Jury Duty lost.
  9. Remove the two (2) slanderous letters from Mr. Meyer's personal record marked as Exhibits C and D in Transcript.

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, prior to January 28, 1976, held a regular assignment as a Sheet Metal Worker at North Little Rock, Arkansas with hours 11:00 p.m. to 7:00 a.m. He was notified to appear for formal investigation:

"... to determine the facts and place your responsibility, if any, for allegedly being absent from your assignment, 11:00 p.m., January 22, 1976 to 7:00 a.m. January 23, 1976, without proper authority, and a review of your attendance personal record files."

As a result of the investigation, which, after postponement, was held February 6, 1976, Claimant was adjudged guilty as charged and was assessed sixty (60) days actual suspension as discipline therefor, effective February 19, 1976.

The Employees contend that Claimant was unjustly suspended because he was not given a precise charge, that it was not a fair and impartial investigation which involved two charges, that Claimant violated no rule of the collective agreement on January 22, 1976, that Claimant was sick, had visited a doctor and furnished a Doctor's statement so attesting, that a fellow worker had advised the foreman that Claimant was sick, that Carrier did not prove Claimant was not sick and that Claimant had not notified Carrier in accordance with Rule 17, that claimant was a third shift committeeman who had zealously protected the Agreement with the result that Claimant was threatened to be fired by the General Foreman.

The Board finds that Claimant was accorded due process. The charge given Claimant was precise. It narrowed the issue to Claimant's absence from his job, which obviously was known to Claimant, on January 22, 1976 and, because of such absence, to review his attendance record. In the circumstances it is found that the notice clearly apprised claimant as to what he was being charged with and why. It was sufficiently clear as to permit Claimant to understand the alleged dereliction of duty which gave rise to the need for holding an investigation. Such charge need not contain reference to a rule, or rules, allegedly violated. Here, Claimant knew with particularity as to what he was being charged with. He could therefore prepare his defense. The record shows that he offered a defense. Claimant was well represented. Perhaps he was overly represented by three Committeemen, whose degree of participation in the examination process undoubtedly led to their allegation that the hearing officer was limiting their right to cross examination because he would not permit certain questions to be raised. Restricting the scope of cross examination to issues raised in direct examination is not held to be error.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. The record reflects that claimant was absent from his regular work shift on January 22, 1976. It is clear that claimant had neither asked for nor received permission for such absence therefrom, that claimant had failed to notify his supervisors of such absence and that claimant was aware of the standing instructions concerning absence from duty to seek permission and report off to the proper supervisors.

Rule 17, which was clearly violated, provides:

"Employees shall not lay off without first obtaining permission from their foreman to do so, except in cases of sickness or other good cause of which the foreman shall be promptly advised."

A lay-off, or absence, by an employee from duty, by the very nature of the employer-employee relationship, requires permission from his employer. Such permission, however, may not always be granted. However, sickness, or other serious cause, for laying off may, in some circumstances, as in Rule 17, alleviate the need for requesting such permission. However, such relief does not eliminate the need for an employee so affected, to report the fact that an illness or such other good cause, will prevent his reporting for duty, to his foreman. Rule 17 also requires that such be reported promptly.

It is held that Claimant by advising his foreman, upon his return to duty, from his absence some 79 hours later, cannot be construed to have been "prompt advice", even if claimant had been sick as he alleged. Claimant's testimony that he had overslept after seeing the Doctor and the vagueness of the Doctor's statement eliminated "sickness" as being the reason for failing to report off. Such an employee failure is deleterious to the efficiency and safety of Carrier's operations. Further, it violates the implicit promises and obligations exchanged in the employer-employee relationship. As pointed out in Third Division Award 18387:

"The employment relationship and the control itself are promises on the understanding that employees will perform the work for which they were employed .... Additionally, the contract clearly spells out on what days and under what circumstances employees shall be excused from reporting to work, demonstrating the unambiguous intent of the parties that, except where provided by contract, employees shall be expected to perform their duties on each day called for by the bulletins under which they work. It follows that if the Carrier has the right to rely on employees performing their duties on each day called for by their bulletins, the Carrier has a concomitant right to be notified when those duties will not be performed so that alternative - measures may be taken if necessary to carry on the business of the Carrier."

Claimant's statement that he was threatened because he was an active committeeman, in the absence of any supporting evidence, places it in the category of being an unsupported self serving assertion.

The Board ordinarily would not interfere with the discipline assessed claimant. The record reflects that no discipline was ever assessed claimant for his horrendous work attendance record attained during the period, December 31, 1971 to January 22, 1976. Notwithstanding, it is believed in such particular circumstance that a 60 day suspension was haphazard and an abuse of managerial discretion, the discipline was not corrective but punitive. Consequently, it is reduced to a thirty (30) day suspension. In view of the foregoing findings, it is unnecessary to reach and decide other issues raised in the Employees claim.

A W A R D

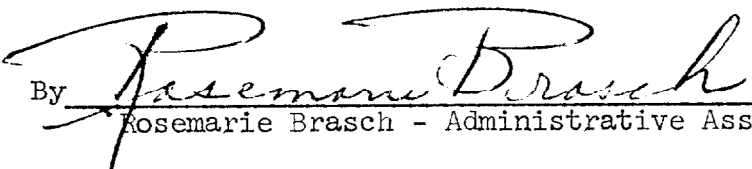
Claim (1) denied.

Claim (2) disposed as per 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 16th day of June, 1978.