

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman, Wayne Hockstetter was unjustly disciplined as result of investigation held in the General Car Foreman's Office, Walbridge, Ohio, December 30, 1975. The charges were not fully proven to be true and Rule 21 was not complied with and Rule 37 was also violated by the company.
2. Accordingly, Hockstetter is entitled to be compensated eight (8) hours at Carmen's applicable straight time rate for each of twenty-two (22) days and also the entry of said investigation should be stricken from Hockstetter's 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 suffered a total of thirty days actual disciplinary suspension of work as a result of the charges in this case, twenty (20) days actual suspension on the specific charges in this case, added to a ten (10) days overhead from the past, making a total of thirty (30) days disciplinary actual suspension of work, the twenty (20) day actual disciplinary suspension of work in this case being on a charge of "insubordination, by way of refusing an assignment, alledging an illness, and falsifying your daily service card on December 11, 1975."

Carrier owns and operates a large facility at Walbridge, Ohio, where cars are switched, classified, repaired, and cars are interchanged from other roads to the C & O lines, 24 hours a day, 7 days a week, where a

large number of carmen are employed and had seniority under the Shop Crafts Agreement.

Carman Wayne Hockstetter, the Claimant, holds a regular assignment with carrier C & O Ry. Co. at the Walbridge Transportation Yards, third shift, hours 11:00 p.m. to 7:00 a.m.

On the night of December 11th, 1975, Claimant duly reported for work and signed his time card for work from 11:00 p.m. Dec. 11th to 7:00 a.m. Dec. 12th, 1975. At approximately 3:00 a.m. Dec. 12th, Foreman of Car Inspectors T. J. Gillette called Claimant on the radio, located Claimant in the shanty and told Claimant that Claimant was wanted for work. There was considerable sparring with words on the radio between Foreman Gillette and the Claimant, before Claimant would answer the request for work, Claimant insisting that he wanted to know what kind of a job it was, so finally Foreman Gillette told Claimant it was "to help inspect a 100 car Shoreline (train) coming in". Claimant said, "mark me off sick". The Foreman said, "No, I am not going to mark you off sick. I gave you a job to do". Claimant responded to the effect that he was ill from a cold, had a headache, was nauseated, and was going home. Claimant left at approximately 3:10 a.m. without further claim or proof of illness, to the Foreman or anyone else, without reporting in to correct his time card, then or at anytime since.

The morning of that same day, December 12, 1978 Claimant Hockstetter drove a school bus for Rossford Board of Education, and was compensated therefor.

By letter dated December 22, 1975, Carrier served upon Claimant a copy of the charges against him, notice of time and place of a hearing thereon to be held on December 30, 1975, and was notified, "to have necessary witnesses and representatives, if desired".

The hearing was duly held at the time and place, and Claimant appeared in person, and was represented by the representatives of his Union. The evidence is ample to support the action taken in this case though Claimant and the Foreman do not agree on the exact words exchanged. The Claimant produced no witnesses, other than himself, to substantiate in any degree whatsoever, his claim of illness. Substantive evidence supports the action. Consolidated Edison Co. VS. Labor Board 305 U.S. 197,229.

Violation of Rules 21 and 37 by the Carrier is charged.

Rule 21 reads as follows:

"Rule 21. Effective Oct. 16, 1947. (a) Employees will not be permitted to lay off from work without first securing permission. The arbitrary refusal of a

"reasonable amount of leave to employees when they can be spared, or failure to handle promptly cases of sickness or business matters of serious importance to the employees is an improper practice and may be handled as unjust treatment under these rules and regulations."

We fail to find any arbitrary violation of the test of reasonableness set out in Rule 21.

Rule 37 reads as follows:

"Rule 37. (Revised June 1, 1969). (a) No employee will be disciplined by suspension or dismissal without a fair hearing by a designated officer of the company. Suspension in proper cases pending a hearing, which shall be prompt, and in cases not requiring discipline as severe as dismissal, shall not be deemed a violation of these rules. At a reasonable time prior to the hearing, the employee shall be apprised of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses, and shall have the right to be represented by his duly authorized representative. If the judgment be in his favor, he shall be compensated for the wage loss, if any; suffered by him."

We fail to find in the facts any violation of Rule 37.

In addition, "no discipline as severe as dismissal" was imposed.

While each Claimant in any case is entitled to the same careful review that any other Claimant in any other case receives, we have given this case thought beyond the severity of the sentence imposed, because of the long service of the Claimant Wayne M. Hockstetter, in service 31 years 8 months, and worked as a Carman 24 years 6 months. It is a record of longevity of which Carman Hockstetter and the Carrier both may be justly proud, but by the same token, such experience carries an obligation of professional performance.

We find that the record sustains the disciplinary action taken by the Carrier. Our finding is grounded on our own judgment here, as well as precedents in previous Second Division Awards Nos. 6247 (Harr), 4782, (Whitney), 3568 (Carey), and others.

A W A R D

Claim denied.

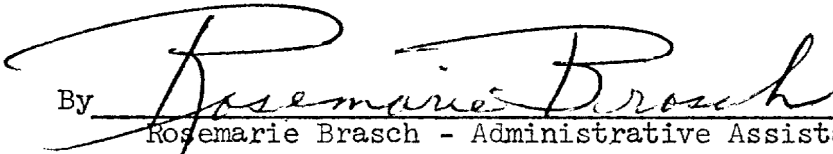
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Award No. 7593
Docket No. 7511
2-C&O-CM-'78

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 12th day of July, 1978.