

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 117 and 26(a), when employe from Thompson Salvage Company made repairs with torch outfit to door of MP 128058, October 30, 1975, No. Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman A. B. McClain in the amount of four hours (4') at pro rata rate as he was available to perform this carmen's work.

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.

On October 30, 1975 a contractor who was employed by the carrier to secure lading in defective cars or transfer lading when necessary made repairs to a defective car door to prevent the leaking of gypsum rock. The organization has progressed this claim on the grounds that the work in question was Carmen's work described in Rule 117 and specifically reserved under Rule 26A.

"RULE 26. (a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work."

"RULE 117. Carmen's work, including regular and helper apprentices, shall consist of building, maintaining, painting, upholstering and inspecting of all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks; building, repairing, removing and applying wooden locomotive cabs; pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks (see note); pipe and inspection work in connection with air brake equipment on passenger and freight cars; applying patented metal roofings; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and in all other work generally recognized as carmen's work."

The work performed by the contractor in this case was the use of a torch and maul to cut a hole in the door in order that a bolt might be put in place to secure the door and eliminate the problem of the leaking gypsum rock. The carrier contends that this was not a repair to the car such as would come within "maintaining" as set out in Rule 117. The carrier claims that it was merely a temporary measure taken to secure the load until such time as a proper repair could be made when the car reached its destination.

The second edition of Webster's New International Dictionary defines maintain as "to hold or keep in any condition, especially in a state of efficiency or validity".

We do not believe that the temporary nature of this repair removed it from the definition of maintain. The object of the work was to keep the car door in an operating condition i.e. closed securely. This was not merely jamming something against the door or the like but involved the use of tools and equipment. This was work which was reserved to the carmen and to assign it to an outside contractor was violative of the agreement.

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Award No. 7621
Docket No. 7409
2-MP-CM-'78


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 - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of July, 1978.

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

Parties to Dispute: (Sheet Metal Workers' International
(Association
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

- 1) That under the current agreement, Sheet Metal Worker Wm. J. Hildebrant was unjustly dismissed from service on January 26, 1976.
- 2) That accordingly, the Carrier be ordered to:
 - (a) Restore the claimant to service with all seniority rights unimpaired.
 - (b) Compensate claimant for all time lost.
 - (c) Make claimant whole for all vacation rights.
 - (d) Pay premiums (or hospital association dues) for hospital, surgical and medical benefits for all time held out of service.
 - (e) Pay premiums for group life insurance for all time held out of 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.

On January 26, 1976 Carrier dismissed Petitioner Sheet Metal Worker Wm. J. Hildebrant from service for:

"Excessive absenteeism for the months of Sept., Oct., Nov. and Dec. 1975, namely, Sept. 26, Oct. 6, 7, 17, Nov. 5, 19, Dec. 8, 9, 10, 11, 12, 17 and violation of Rule 2 general rules Sept. 26, Oct. 22, 23, Nov. 20, 24, 25, 28, 1975 and January 2, 5, 1976."

Rule 2, cited in the order of dismissal as a basis for dismissal for tardy reporting is the 8 hour a day work rule, while Rule 33 is relied upon by Carrier to support its absenteeism charge. Those two Rules of the agreement between Carrier and its Union Employees follow:

"Rule 2 - Workday

Eight hours shall constitute a day's work. All employees coming under the provisions of this agreement, except as otherwise provided in this schedule of rules, or as may hereafter be legally established between the Carrier and the Employees, shall be paid on the hourly basis."

"Rule 33 - Absence from Work

In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness, or for any other good cause, shall notify his foreman as early as possible. Employees are expected to make advance arrangements if necessary to be absent, when known."

On January 26, 1976, Carrier discharged Employee Sheet Metal Worker Wm. J. Hildebrant for excessive absenteeism not excused by Rule 33, and late reporting for work in violation of the 8 hour workday Rule No. 2. This action was taken upon the following work record:

Absenteeism on Sept. 26, Oct. 6, 7, 17, Nov. 5, 19, Dec. 8, 9, 10, 11, 12, 17 and 26, 1975.

Tardiness in reporting for work:

Sept. 26, 1975 - $\frac{1}{2}$ hour late	-worked 7- $\frac{1}{2}$ hours
Oct. 22, 1975 - $\frac{1}{2}$ hour late	-worked 7- $\frac{1}{2}$ hours
Oct. 23, 1975 - 1- $\frac{1}{2}$ hours late	-worked 6- $\frac{1}{2}$ hours
Nov. 20, 1975 - 1 hour late	-worked 7 hours
Nov. 24, 1975 - 1 hour late	-worked 7 hours
Nov. 28, 1975 - 1 hour late	-worked 7 hours
Jan. 2, 1976 - 3 hours late	-worked 5 hours
Jan. 5, 1976 - 1 hour late	-worked 7 hours

In support of its drastic action, Carrier contends that Employee had received discipline on two prior occasions for the same charge during his two years of employment by the Carrier, and that his work habits did not improve. Record, p. 34. Employee responded with a doctor's excuse for his absence from Dec. 8th to Dec. 15, 1975, and stated that he got hurt on the job Dec. 16th as the reason for his absence on Dec. 17th, 1975 and that on Dec. 26th they had a lot of snow and that employee had an accident on the way in to work, that Jan. 2nd, 1976 the turnpike was closed down and all the roads were packed with cars, and that the delays on other days were the result of traffic. R. 79, Employee also testified that he called the Diesel Shop in sufficient time to report off (Rule 33) on the dates of Oct. 6, 7, 17, Nov. 5, Nov. 19, Dec. 17, and Dec. 26, (Record, 80), and his testimony on that point was corroborated by others (Record, 80).

However, the record shows that Employee Hildebrant lived 86 miles from his place of work, traveling that distance back and forth each day, hampered by snow on cold winter days, but testified that he was planning to make arrangements to stay in a rooming house four nights a week near the site of his job. Record, 81.

Mr. L. A. Falkowski, Supt. Locomotive Shop, testified that Employee Hildebrant was a very good worker in the shop "when he does work". R. 81. J. Judge, Local Committeeman, Sheet Metal Workers, testified that Employee Hildebrant's work "has always been very satisfactory and I'm very satisfied with his work in the E'Port Deisel Shop". R. 81.

From the record, we find that Employee Hildebrant is a good and satisfactory worker in the shop, but with an unsatisfactory record of lateness (being late is not being absent). We find that any absenteeism or lateness were caused primarily by Employee living 86 miles from his job, his other problems caused thereby have been intensified by winter snowstorms.

We find that employee promised to find a room near his work for four nights a week if his employment continues.

Employee's complaint that he was denied a fair hearing because Mr. Falkowski was the accusing officer, and the presiding and hearing officer, and made recommendations for Employee Hildebrant's dismissal, has been held in other Board cases to be insufficient, by itself, to make the holding of the Hearing Officer invalid, but it certainly raises questions of objectivity of the hearing, and further questions of the severity of the discipline administered.

Carrier's treatment of tardiness as a violation of Rule 2, the 8 hour rule, is denied. Of course we are not holding that when the Employee is an hour late that he must be paid for 8 hours' work rather than the seven hours he actually worked, nor are we holding that continual tardiness constitutes satisfactory service.

Railroad Transportation is an exacting industry. Its continued operation demands high efficiency and dedication of all levels of workers and executives who engage in it. Without that dedication to promptness and efficiency, railroad transportation would utterly fail.

In order to maintain that efficiency, we recognize the right of the Carrier to discipline Employees for infraction of the contract Rules agreed upon between the Carrier and Employees, to protect the rights of each, and to assure the safe and efficient operations of Carrier.

We find that Employee reported off on the days he was absent. While this does not make excessive absenteeism blameless, reporting off reduces its gravity to that of a less nature.

Under all the facts in this case, we find that the discipline inflicted, that of dismissal, almost total economic execution, to be excessive, and we order Claimant restored to service with his seniority rights unimpaired with 60 days' pay.

We lack power to order Claimant to use part of the 60 days' pay to find lodgings near his place of employment, to be construed as approval of the record of employee in this case, but since he is a good worker, its purpose is to give him an opportunity to move in near his work, where satisfactory performance may be had.

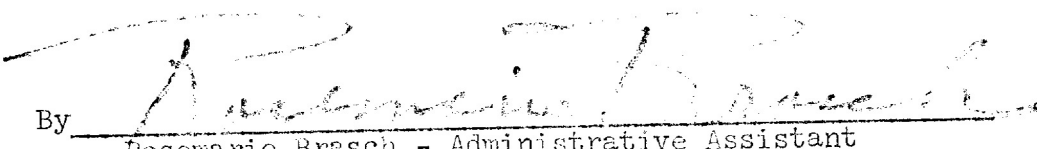
A W A R D

Claim sustained as modified by 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 21st day of July, 1978.