

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman Frank D'Angelo was unjustly suspended from the service of the Illinois Central Gulf Railroad for a period of sixty (60) working days, beginning at 7:00 a.m. on September 12, 1978 and continuing through December 4, 1978.
2. That accordingly, the Carrier be ordered to compensate Carman Frank D'Angelo for all time loss, any over-time he would have been entitled to, sixty days applied in computing time that is required for vacation purposes, and any and all other benefits he is entitled to as a condition of employment, account of the aforesaid suspension.

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 August 12, 1978, Carman D'Angelo asked Assistant General Car Foreman L. K. Fultz if he could be excused from working his job assignment on August 14, 15, and 18 (the 16th and 17th were regular days off) for "personal reasons". Mr. Fultz asked Claimant what kind of personal business he had; D'Angelo refused to elaborate. Foreman Fultz reminded Claimant that he had been excused for personal business some two months earlier, at which time he had been reminded that he was not to allow personal business to interfere with his job. He said he would check the work schedule and advise Claimant on the matter. After checking the schedule, he asked Claimant to return to his office. When Claimant did so, he was told by Mr. Fultz that Mr. Fultz would have to "know more about his reasons for requesting to be off, so that he could determine whether Mr. D'Angelo's personal business was more important than his job assignment". Claimant replied that his attorney had advised him that he did not need to give specific reasons for his request, and Mr. Fultz then denied such request.

Claimant nevertheless absented himself from duty on August 14 and 15. On the 17th, he returned to Mr. Fultz's office and presented a letter from his attorneys explaining that he had been attending court in Brownsville, Texas, on such days. After formal investigation, Claimant was suspended for 60 days for absenting himself from work without proper authority.

The controlling rule is Rule 23, which reads as follows:

"RULE 23. No employee shall absent himself from work for any cause without first obtaining permission from his foreman if possible, except in case of sickness, when he shall notify his foreman as soon as possible. 'Personal business' will be sufficient reason to request leave of absence without detailed explanation thereof."

Carrier had the right to refuse Claimant's request without offering any justification for doing so. At the same time, Claimant had no right to absent himself from work without first obtaining permission. Under normal circumstances a 60-day suspension would not be excessive discipline for the rule infraction under consideration.

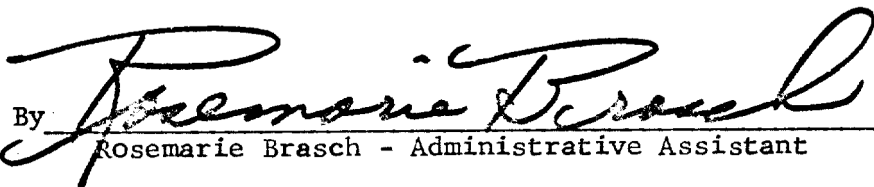
But the troubling aspect of this case is that Mr. Fultz rendered the last sentence of Rule 23 meaningless in insisting that Claimant reveal to him the nature of his "personal business". In placing this language in the rule Carrier surrendered a portion of its fundamental right to require that the service be protected, "except in case of sickness". For the reason that we feel constrained to preserve the integrity of the rule as written, and solely because of such reason, we will order the discipline reduced to a suspension of 30 days.

A W A R D

Claim sustained in conformity with the foregoing 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 10th day of December, 1980.