

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(
(
(Missouri Pacific Railroad Company

RECEIVED

DEC 29 1980

Dispute: Claim of Employees:

P. E. LaCOSSE

1. That Laborer, Thomas Rishton, was unjustly dismissed from the service of the Missouri Pacific Railroad Company on July 31, 1978, on allege charge of violation of General Rules B, E and N of the Uniform Code of Safety Rules in connection with his reported failure to protect his assignment, 11 P.M., to 7 A.M., July 10, 11 and 12, 1978.
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, Thomas Rishton, for time lost from July 31, 1978 through December 18, 1978 at his pro rata rate of pay, and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, Thomas Rishton, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Rishton an additional sum of 6% per annum compounded annually on the anniversary date of same claim.

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 July 27, 1978, Claimant was served with notice to appear at investigation "to develop facts and place responsibility, if any, in connection with your reported failure to protect your assignment as Laborer, 11:00 P.M. to 7:00 A.M., July 10, 11, and 12, 1978, Avondale, La." As a result of such investigation, Claimant was dismissed for violation of the rules set forth in the statement of claim above.

The evidence in the transcript of the investigation is conflicting. Our

findings herein support Carrier's view of the matter in view of the fact that we have no justification for setting aside Carrier's judgment as to credibility of the witnesses.

On Saturday, July 8, 1978, Claimant (who was off duty at the time) came to the repair track office seeking an audience with Master Mechanic York. Mr. York was not on duty, and General Car Foreman J. F. Gailbraith was in charge. Claimant advised Mr. Galbraith that he would like a leave of absence, stating that he had a chance to better himself and would like to try it before he quit working for Carrier. In Gailbraith's words, "I told him there ain't no way that I could give you a leave of absence to work another job". Shortly thereafter, and without securing any authority for time off from Mr. Galbraith, Claimant departed, saying he was going to call Mr. York.

Instead, Mr. Rishton waited until 10:00 P.M. on July 10, and only one hour before the start of his regular assignment, at which time he called Car Foreman W. R. Mancuso and advised Mancuso that he had been granted a two week leave of absence by Mr. Galbraith and thus would not be at work. In truth, Claimant had no permission to absent himself from duty.

We consider the points raised by the Organization in challenging the discipline assessed Mr. Rishton.

The Committee makes the valid point that Carrier failed to prove that Claimant violated all of the rules for which he was discharged. The letter of discipline stated that Claimant was dismissed "... for your violation of General Rules B, E, and N of the Uniform Code of Safety Rules in connection with your reported failure to protect your assignment ... July 10, 11, and 12 ...". Such rules read as follows:

"Rule B --Employees must have a proper understanding and working knowledge of and obey all rules and instructions in whatever form issued, applicable to or affecting their duties. If in doubt as to their meaning, employees must apply to proper officers for an explanation. If in doubt as to proper working procedure, employee must consult his supervisor."

"Rule E--Employees must render every assistance in their power in carrying out the rules and instructions. Courteous cooperation between employees is required for proper functioning under the rules and instructions."

"Rule N--Employees must not enter into altercations, play practical jokes, scuffle or wrestle on Company property."

Employees must not be:

- (1) Careless of the safety of themselves and others.
- (2) Negligent

- "(3) Insubordinate.
- (4) Dishonest.
- (5) Immoral.
- (6) Quarrelsome or otherwise vicious."

While we are aware of the impracticality of imposing on the railroad employee disciplinary system such procedural constraints as obtain in our judicial system, nevertheless we deplore the practice evidenced here by a charge and decision laden with irrelevancy and imprecision. Simply stated, Claimant's culpability was a failure to protect his assignment, a fundamental delinquency for which an employee may be disciplined even in the absence of proscription by published rule. Indeed, in many cases charges are drawn, investigations are held and discipline is assessed without the mention of a particular rule, but with the simple statement "failure to protect his assignment".

A disciplined employee should be furnished with a particularization of his culpability, not with a laundry list of obviously inapplicable rule provisions.

Yet while we deplore the practice, we do not feel that justice would be served if we sustained the claim because of the incompetent handling of the matter. In spite of all of the irrelevant provisions cited in the Carrier's notice of discipline, Mr. Rishton undoubtedly was well aware of the fact that the significant item was his breaching his fundamental duty to protect his assignment.

The Organization's second point is that Claimant was under the care of a doctor from July 10 through July 24, 1978, and should therefore be excused for his absence from duty. However, the doctor's certificate introduced in evidence by Claimant is so vague as to be useless. Such certificate does not indicate that there was any disability precluding Claimant's protecting his job.

We further find no merit in Petitioner's argument that Claimant was driven to seek a leave of absence because of harrassment and intimidation by his foreman.

Finally, we reject the Organization's claim that the investigation was not conducted in a fair and proper manner. To the contrary, we find that Claimant was accorded due process in the proceeding.

Claimant was restored to duty on December 19, 1978. Thus, we are dealing with, in effect, a suspension without pay from July 31 through December 18. We do not find such suspension unreasonable under the record before us.

A W A R D

Claim denied.

Form 1
Page 4

Award No. 8545
Docket No. 8287
2-MP-F0-'80

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 17th day of December, 1980.