

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That the Belt Railway Company of Chicago violated the terms and conditions of the current Agreement specifically Article V of the August 21, 1954 National Agreement when Mr. W. M. Cunningham, Director of Labor Relations and Personnel, failed to decline the claim set forth in the General Chairman's letter, dated December 10, 1979, within the required sixty (60) day time limit.
2. That as a result of an investigation held on Tuesday, April 17, 1979, Carman George Marrero was suspended for a period of thirty-one (31) days, from the service of The Belt Railway Company of Chicago. Said suspension is arbitrary, capricious, unjust, unfair, unreasonable and an abuse of managerial discretion as well as being in violation of Rule 20 of the current working Agreement.
3. That the Belt Railway Company of Chicago be ordered to compensate Carman Marrero for all wage loss suffered account of said suspension, plus interest at the current rate.

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.

After investigation, Claimant, Carman George Marrero was suspended for a period of thirty-one (31) days for failure to report to duty. Claimant was on vacation from January 6 through January 17, 1979 and was scheduled to work on January 20, 1979. On January 16, 1979, Claimant sent Carrier a telegram stating:

"Due to serious illness of my daughter I am requesting to be off until further notice. Please mail any correspondence to: In care of A. Fanchez, Bahia Sur Calle, A-108, Villa Marina, Gurabo, Puerto Rico 00658. Sorry for the inconvenience. Thank you. George Marrero."

Carrier advised Claimant by mailgram on January 22, 1979, that he should return to work unless he could furnish hospital proof of his daughter's illness. Claimant did not respond and later claimed that he did not receive the wire. Claimant next notified his foreman by telephone on March 1, 1979, that he would not return to work until March 31, 1979.

The Organization contends that Carrier violated, Rule 20 of the Agreement by imposing this suspension. It also raises the procedural argument that this claim had not been properly denied within a sixty (60) day time limit as required by Article V of the Agreement.

Rule 20 reads as follows:

"No employee shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."

Time Claims and Grievances state in pertinent part:

"Time Claims and Grievances - Article V

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Carrier defends its suspension citing Claimant's alleged violation of Rules H and A. Rules H and A are quoted as follows:

"Rule H - Employees must be alert and devote themselves exclusively to the Company's service, attend to their duties during the hours prescribed, and comply with the instructions from the proper authority in matters pertaining to their respective branches of the service. They must not absent themselves from duty, exchange duties with, or substitute

"others in their place, nor engage in other business without proper authority.

They must report for duty as required and those subject to call for duty will be at their usual calling place, or leave information as to where they may be located."

"Rule A - All employees are subject to these rules and special instructions and must be conversant with and obey them. If in doubt as to their meaning, they must apply to proper authority for an explanation. Foreign line employees are subject to these rules and special instructions while operating on this property."

The evidence presented establishes that Claimant is guilty as charged in that he was absent from duty from January 20, 1978 through March 30, 1979, without proper authority. His conduct violates the express terms of Rule H. As such, he is subject to appropriate disciplinary action.

However, given all of the circumstances, the thirty-one (31) day suspension issued is excessive. Therefore, we must conclude that the suspension imposed should be reduced to a fifteen (15) day suspension and we do so find.

As to the Organization's procedural arguments, we find that the intent and purpose of Carrier's August 2, 1978 letter was to form a proper denial. Third Division Award No. 11208 addressed this issue and reads:

"There is no merit in the contention. The quoted language does not require detailed or specific reasons for disallowance. See Awards 10416, 10368, 9835, 9615. A basic and valid reason for denying any claim is that Agreement was not violated because implicit in the statement is the opinion that the claim lacks support under the rules of the agreement." (emphasis supplied)

Here, although the denial was not perfectly detailed, it clearly constitutes a denial. The contention that the denial did not meet the requirement for specificity is rejected and therefore, the contention that Carrier failed to meet the sixty (60) day time limit must also be rejected.

A W A R D

Claim sustained consistent with and to the extent of the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of October, 1981.