

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon 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 Carman David A. Higen was refused compensation for one (1) hour for services performed on Thursday, December 27, 1979 and was denied his rights to work his scheduled eight (8) hour tour of duty on Friday, December 28, 1979.
2. That Carman Higen was suspended for a period of two (2) working days, January 17 and 18, 1980, as a result of an investigation held on January 10, 1980. Carrier's action as set forth above is grossly unjust, unfair and unreasonable as well as being a violation of Rule 20 of the current working Agreement.
3. That, The Belt Railway Company of Chicago be ordered to compensate Carman Higen the exact amount of his losses, or any and all wage losses sustained, plus interest at the current rate on the amount of reparations due and his record cleared of the discipline assessed.

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 December 31, 1979, the Carrier directed a notice of investigation to the Claimant to appear at an investigation at 9:30 A.M., January 10. The investigation was in connection with the Claimant's allegedly leaving work approximately 4:00 P.M. on December 27, 1979, "without reporting off to your supervisor or making any reason for it being necessary for your leaving your assigned duties." The investigation was held as scheduled and as a result the Claimant was given a two-day suspension.

The transcript reveals that on December 27, 1979, the Claimant reported for his normal tour of duty at 3:00 P.M. It is undisputed that approximately 4:00 P.M. the Claimant left his assignment for home. The dispute revolves around

whether the Claimant notified his foreman that he was leaving. It is also undisputed that on Friday, December 28, when the Claimant reported for duty, he was denied the right to work his shift and was further informed that he would not receive any compensation for December 27, 1979. The denial of compensation for December 27 involved the one hour between when he reported for duty at 3:00 and when he left the property at approximately 4:00 P.M.

In reviewing the evidence, it is the Board's conclusion that there is substantial evidence to conclude that the Claimant was guilty and that the two-day suspension on January 17 and 18 was appropriate. The evidence establishes that the Claimant, shortly after expressing some dissatisfaction with a portion of his daily work assignment, went to the office of Mr. Fred Fender, Foreman, and stood in the doorway or hallway outside the office, depending on whose version is believed. It is undisputed that at this point in time Mr. Fender was on the phone. Testimony as to what happened from this point on is significantly conflicting. However, even assuming that it can be concluded that the Claimant did, in fact, tell the Foreman he was leaving for home, it is clear that Claimant did not seek the acknowledgement or permission of the Foreman before leaving. The Claimant's own testimony makes this conclusion evident. It is not believed that standing outside, or even in the doorway, of a noisy office and saying something to a supervisor about going home, while he is obviously busy and attentive to his business on the telephone, without seeking his acknowledgement or permission, is a proper method of laying off. Nor do we feel that two days suspension is excessive for this type of event.

Although we find two days of discipline proper, the denial of the one hour's pay on the 27th and the denial of Claimant's right to work on December 28, 1979 is found to be in violation of the contract. The Carrier's supervisor denied the one hour of pay on the 27th on the belief the Claimant performed no duties between 3:00 and 4:00 P.M. However, the evidence as contained in the investigation transcript does not support such a conclusion. The evidence is clear that the Claimant performed duties normally thought to be preparatory and necessary to the work of a Carman. The Carrier did not refute this with any witnesses and did not sustain the burden of proof incumbent upon them in regard to this issue.

Regarding the denial to work on the 28th, we must refer to Rule 20, which states:

"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." (Emphasis added)

The Carrier's defense in regards to the 28th is not clear. The Carrier's only mention in regard to the 28th in its submission is the following statement: "Carman Higgins was withheld from service on Friday, December 28, 1979 pending notice of charges". There is no other mention of the 28th besides this statement. Further, there is no refutation of the Organization's contention that in regards to the 28th an employee must be given a fair hearing before being disciplined. As we read Rule 20, we find that the suspension pending a hearing will not be a violation in "proper cases". However, it is the finding of the Board that the instant case and the facts surrounding it does not constitute a proper case for suspension pending a hearing. The Claimant was entitled to a hearing before being suspended on December 28.

In conclusion, it is our finding that part 2 of the claim is denied. However, we find that the contract was violated in respect to December 27 and 28 and therefore the Claimant should be compensated for one hour's time lost for December 27 and for eight hours time lost for December 28, but with no interest as claimed.

A W A R D

Claim sustained to the extent listed above in 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 10th day of February, 1982.