

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company improperly suspended Car Cleaner Dennis Biggs for three (3) days in violation of rule 29 after investigative hearing held on January 30, 1980.
2. That accordingly Mr. Gibbs should be made whole in line with rule 29. The charge should be expunged from his record, and he should be compensated for his net wage loss as well as any other loss he may have been caused to suffer due to Carrier's miscarriage of justice.

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 employees 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.

The Claimant, a Car Cleaner, was employed in October, 1974. On January 8, 1980, Claimant received an emergency telephone call at approximately 10:30 A.M. His immediate supervisor attempted to locate the Claimant at his assigned work location, but was unable to do so. At approximately 11:00 A.M., Claimant received another emergency telephone call and once again his supervisor was unable to locate the Claimant at his assigned work location. At approximately 12:00 Noon, the supervisor and Claimant met and the Claimant notified his supervisor that he had an emergency telephone call. The supervisor asked Claimant where he had been all morning and the Claimant replied that he was upstairs going to the bathroom. The supervisor, at that time, told the Claimant he would have to see Foreman Naughton to get permission to be off. The Claimant, after advising one supervisor that he had permission from another to be off, marked his time card out at 12:15 P.M. and left.

In a letter dated January 11, 1980, Claimant was notified to report for a Hearing on the following charge:

"Violation of Washington Terminal General Rule 'O' which reads in pertinent part, 'No employe will be absent from duty ... without permission.', when on January 8, 1980, about 10:40 a.m., you absented yourself from your assignment on Trains #142 and #176, located on Tracks 4 and 5 without permission. And on this same date about 12:15 p.m., you turned in your time card and left the property without permission."

The Claimant contended at the hearing that he had permission from one of the supervisors to be off. However, all three supervisors testified that the Claimant did not receive permission from them to be off.

This Board, once again, is confronted with a sharp credibility conflict in testimony. The principle that the Board may not substitute its judgement for that of the Carrier when there is conflicting testimony is conflicting testimony is well established.

There is nothing contained in the record to suggest that the Carrier was arbitrary or capricious in assessing a three (3) day suspension in a case such as this and, accordingly, the Board will deny the claim.

A W A R D

Claim denied.

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.