

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Cleaner Michael Randolph was erroneously charged with poor attendance for failure to work a full 8 hours on September 25; October 8, 9, and 10, 1979.
2. Coach Cleaner Michael Randolph was unjustly assessed 15 days deferred suspension on October 25, 1979, following investigation held October 19, 1979.
3. That the Chicago and North Western Transportation Company be ordered to drop the charges against Coach Cleaner Michael Randolph, and remove the deferred suspension from his file in accordance with Rule 35(h).

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.

Claimant held regular assignment as coach cleaner for the Chicago and North Western Transportation Company at its California Avenue Maintenance Facility Transportation Company at its California Avenue Maintenance Facility located in Chicago, Illinois.

On October 10, 1979 Claimant was notified by Mr. W. H. Wonnell, Manager Suburban Operations-Mechanical, to appear for formal investigation on October 16, 1979. In this letter Claimant was advised that the charge placed before him was poor attendance: he allegedly had not worked a full eight (8) hours on September 25, and on October 8, 9 and 10, 1979. The charge was an alleged contravention of Carrier General Regulation and Safety Rule No. 14 and Rule No. 20 of the Agreement. This investigation was postponed until October 19, 1979 at the request of the Organization. After a hearing was conducted on the latter date by Mr. D. L. Schmidt, Hearing Officer, with Mr. P. Pilipuf, representative for Claimant and witnesses in attendance, Claimant was then issued, on October 25,

1979 Discipline Notice No. 78 by Carrier over the signature of Mr. W. H. Wonnell. The discipline which was assessed the Claimant was 15 days deferred suspension.

The central issues of the instant case are twofold: (1) did the Claimant, Mr. M. Randolph, meet the general standards for attendance to duty, as stipulated by Rule No. 14 of Carrier, and (2) did he fulfill specific reporting requirements as stipulated by Rule No. 20 of the Agreement?

With respect to September 25, 1979 - the day on which Mr. Randolph denies he was late - the evidence of record is indisputably against the Claimant. There is no logical nor substantive reason to impugn the truthfulness of Mr. L. Velazquez, the clerk, who according to all evidence available had responsibly filled that position for over 7 years. Thus, Claimant apparently fulfilled the directives of Rule No. 20 on this day although he denies that he did so. The record as it relates to October 8, 9 and 10, 1979 is puzzling. On all three of these days the hearing testimony suggests that the Claimant was under "emergency" medical treatment: the first two days for an ailment the nature of which Claimant refused to divulge, and on the third day for a dental emergency. That the Claimant might have undergone three consecutive days of medical "emergencies" for different ailments taxes the Board's credulous powers even though, in these cases, the formality of Rule No. 20 might have been adhered to, namely, the Claimant had either called in himself (October 10th), or had another person (unidentified) call in for him (October 8th for October 8th and 9th). But this still does not absolve the Claimant from adhering to Carrier Rule No. 14 which in no way is inconsistent with Rule No. 20 of the Agreement, nor does Rule No. 14 postulate the principle that an employee may be absent for any reason simply because he or she chooses such (See Public Law Board No. 2512, Awards Nos. 1 and 5). At the very least, the record suggests that this is exactly what the Claimant chose to do on at least September 25 and October 10, 1979, even if the other two days of absence did result from a medical emergency. Given these facts 15 days deferred suspension is not unduly inappropriate.

Rule No. 14 of the Carrier's General Regulations and Safety Rules states:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

Rule No. 20 of the Agreement states:

"Employees wishing to be absent from work must obtain leave of absence from the foreman whenever practicable to do so, and foreman will endeavor to grant leave of absence when requested."

A W A R D

Claim denied.

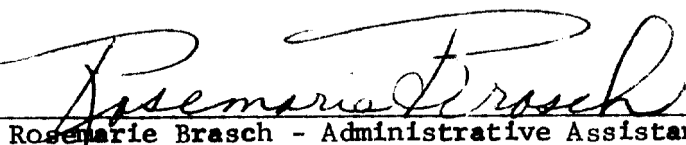
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Award No. 8953
Docket No. 9127
2-C&NW-CM-'82

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 3rd day of March, 1982.