

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: (International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. The charges against Mr. Mack are without foundation and were brought with the sole intention to assess discipline.
2. That accordingly the Consolidated Rail Corporation be ordered to remove the six (6) day suspended suspension and any mark placed upon Mr. Macks' work record.

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, Kenneth Mack, a Boilermaker Inspector, with three years of service was, on date of March 28, 1979 assigned to Carrier's Collinwood Diesel Locomotive Shop in Cleveland, Ohio working the first tour of duty with hours from 7:00 A.M. to 3:30 P.M. By letter dated April 9, 1979, Carrier notified Claimant to attend a trial scheduled for May 2, 1979, for the purpose of answering the following charge:

"Being away from assigned work area without permission on March 28, 1979 between 11:00 AM and 11:30 AM."

Based on the evidence adduced at the trial Carrier adjudged Claimant guilty as charged and accordingly imposed the discipline of an actual six (6) day suspension. Subsequently, at an appeal hearing held on June 15, 1979, Carrier denied the appeal but altered the discipline imposed, changing it to a six (6) day deferred suspension.

The record reflects that on the morning in question, March 28, 1979, Claimant was assigned to work on diesel unit 9329. Claimant admits he absented himself from the work area for only fifteen (15) minutes between 11:15 AM and 11:30 AM, not thirty (30) minutes as so alleged by Carrier for the sole purpose

of using the restroom. The Organization argues there is no contractual obligation for an employee to secure prior permission from supervision to use restroom facilities and no established practice on the part of Carrier to require same, particularly when the amount of time is reasonable. The Organization submits that relative to the instant case, fifteen (15) minutes is, in fact, a reasonable amount of time. Based on its foregoing argument, the Organization takes the position Claimant was wrongfully disciplined and accordingly requests the relief set forth in the above stated claim.

Carrier notes that at the trial held on May 2, 1979, Claimant freely admitted he was absent without permission for approximately fifteen (15) minutes rather than the thirty (30) minutes as so charged. Carrier argues that in view of Claimant's admission against self-interest it is relieved of the burden of proof which ordinarily it would shoulder in any case involving a matter of discipline from the lowest quantum up to and including the maximum quantum, that of discharge. In support of its position on this point, Carrier cites as authority the following National Railroad Adjustment Board Awards as follows:

First Division Award 16712:

"In view of claimant's plea of guilty the trial was over,
***."

Third Division Award 7042:

"*** An admission of guilt eliminates the necessity for
a decision as to guilt or innocence. ***"

Third Division Award 9033:

"Suffice to say, that by Mr. Benton's plea of guilty he
admitted all of the material elements of the charge
against him. Even if the Carrier had failed in its proof,
which is not the fact, the plea of guilty removed the
necessity or proof of the charge that Mr. Benton had
violated a safety rule of the Carrier in the particulars
alleged."

Carrier asserts Claimant had no right whatsoever to leave his assignment for a personal reason without first obtaining permission and points out that if all employees so acted, chaos would result in the work place. Carrier takes the position that the subject discipline was fully justified and warranted and that the instant claim is wholly lacking in merit, substance or support and therefore should be denied in its entirety.

The Board notes that the very same factual situation and set of circumstances was presented before us by the same parties in Second Division Award 8994. We find, in reaching a resolution of the instant dispute, appropriate to reiterate what we said in Award 8994. We said in pertinent part the following:

"Based on a close scrutiny of the entire record, the Board

finds Carrier's position in the instant case must be upheld. ~~Most~~ critical in our determination is the Claimant's own admission he absented himself from his assigned work area without permission. We find it matters not whether Claimant was gone for the fifteen (15) minutes he admits to or the thirty (30) minutes as so alleged by the Carrier, since the basic fact has been clearly established that he was gone (from his assigned work area without permission), for some period of time. ... We are in full agreement with the concept that a business including that of a railroad, cannot be operated either safely or efficiently unless its employees accept and discharge their responsibilities and perform their duties timely and efficiently. In connection with this latter point we believe Carrier has the right to expect each and every employee to work a complete tour of duty."

Finally, the Board finds nothing in the record which remotely suggests Claimant was not afforded a fair and impartial hearing by the Carrier, or that Carrier, in any way, abused its managerial discretion by prejudicing Claimant's rights. We note that ultimately, no actual time was lost by Claimant as a result of the subject discipline, but that in any event, we agree with Carrier's view that the six (6) day deferred suspension was appropriate and fully commensurate with the nature of the offense committed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.