

The Second Division consisted of the regular members and in addition Referee Kay McMurray 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. Carman Michael Vaughan was erroneously charged with (1) arriving late for work on 9/7/79; (2) being unable to perform his duties on 9/7/79; (3) failure to obey an order on 9/7/79; and (4) failure to report for work on 8/21/79 and 9/8, 9, and 10/79.
2. Carmen Michael Vaughan was unjustly assessed thirty (30) days actual suspension on October 10, 1979, following investigation held September 17, 28 and October 2, 1979.
3. That the Chicago and North Western Transportation Company be ordered to compensate Carman Michael Vaughan eight (8) hours pay per day for the thirty days he was unjustly suspended, plus all benefits to which he is entitled in accordance with Rule 35(c).

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, Mr. Vaughan, was notified by letter dated September 11, 1979 to appear for an investigation on September 17, 1979. The charges read:

- "1 - Your responsibility for your failure to protect your assignment when you arrived 35 minutes late for work on September 7, 1979.
- 2 - Your responsibility for your failure to properly protect your assignment when you were unable to perform your duties as a Freight Car Inspector. Yard 4 on September 7, 1979, third shift.
- 3 - Your responsibility for your failure to obey an order which was given to you by Mr. S. M. Prisuta, General

Car Foreman on September 7, 1979 at approximately 11:50 P.M. This order advised you to stay on the property and wait for Mr. Prisuta to get back to you.

- 4 - Your failure to protect your assignment on August 21, September 8, 9 and 10, 1979 when you failed to report for work."

Although the notice was sent by certified mail, claimant stated he did not receive it. The record reveals that it was sent to the same address as all other postponement notices and there is no claim that further notices were not received. Mr. Vaughan admitted that the charges were read to him over the telephone "3 or 4 days before the hearing". The investigation convened on September 17 but was postponed at the request of the claimant to allow him more time to obtain witnesses. It reconvened on September 28 and was finally completed on October 2, 1979. The final delay was occasioned by claimant's request to obtain another witness.

The Organization charges that the hearing was not fair and impartial because claimant did not receive proper written notice five days in advance as required by contract. Further, it points out that the hearing was not held within the 10-day time limit required by the contract. We find these contentions lack merit. The written notice was mailed six days in advance of the hearing date. The hearing convened within the time limit and the postponements were given at the request of the claimant. Further, they were granted as a protection to his rights and his case was certainly not jeopardized.

The record is somewhat contentious and there is some conflict in testimony.

With respect to charge one, claimant did appear at his normal reporting station 35 minutes late, but claimed he had reported on time at another location. The General Foreman testified that he had been unable to locate Mr. Vaughan and called for a replacement. Claimant's own witnesses testified regarding his discussion with the foreman but none of them had seen him prior to the arrival 35 minutes late at his normal reporting point. The preponderance of credible evidence indicates that claimant was guilty of being late as charged.

With respect to charge number two, the record is not clear. There is no evidence that Mr. Vaughan was in fact unable to perform his duties other than the statement of the foreman who was upset at his late arrival. Two witnesses testified that claimant appeared normal to them. The Carrier failed its burden of proof that claimant was in any way incapacitated on the day under consideration.

There is considerable conflict in the record regarding charge number three. The foreman testified he suggested that claimant stay on the property and wait for him to get back to him.

On the other hand, claimant and two witnesses testified that the discussion between Mr. Vaughan and the foreman was contentious and claimant was told

several times that he had been late and should go home. It is clear that a replacement had been called. It is understandable under the circumstances that claimant would leave the property. There is insufficient evidence to conclude that claimant was guilty of charge number three.

Evidence regarding charge number four is somewhat more clear. Claimant testified that he didn't think he had received permission to be off on August 21. His sister told him she had called in because she couldn't wake him up. With respect to September 8, 9, and 10, the evidence indicates that claimant had his sister call in sick for him on the eighth. At that time the clerk reported to her that Mr. Vaughan might be pulled out of service. Claimant relied on that rumor and did not show up for work on the 9th and 10th. Reliance on a rumor or maybe statement is done at one's own peril. Under the conditions a reasonable effort should have been made to determine the situation. Absenting himself from work could only make the problem more difficult.

From the foregoing and the entire record we find that claimant was guilty of being late for work on September 7. Further, he was absent from work on August 21 and September 9 and 10 without proper authority. Some corrective action was merited. Mr. Vaughan's record was far from exemplary and included a 45-day suspension for being absent from work a few months prior to the problem under consideration.

Under such conditions, we do not view the penalty assessed as being unjust.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982