

The Second Division consisted of the regular members and in addition Referee David H. Brown 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 violated the controlling agreement when they unjustly dismissed car cleaner Mark Bell from the service as a result of an investigation held on August 14, 1979.
2. That accordingly the Washington Terminal Company be ordered to reinstate Mr. Bell and compensate him for his net wage loss due to this unjust dismissal also with seniority and vacation rights unimpaired, expunge this mark from his record in line with rule 29.

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.

On August 2, 1979, Claimant Bell was requested to report on August 14, 1979, for a hearing on the following charge:

"Excessive Loss of Time from Duty during the month of July, 1979, as follows:

July 1979 - 10, 11, 23, 24, and 25"

The hearing was held as scheduled. In such hearing Claimant's prior disciplinary record was reviewed. We set out such record:

5/16/78 - Reprimand - Excessive Loss of Time from Duty from 3/5/78 through 4/23/78, as follows:
March 1978 - 5, 9, 12, 13, 14, 16, 19
April 1978 - 11, 23.

8/31/78 - Suspended 5 days - Excessive Loss of Time from Duty during the month of July 1978, as follows:
July 1978 - 3, 9, 10, 17, 25, 30
Suspension to be served 9/10/78 through 9/14/78.

- 9/12/78 - Suspended 15 days - Excessive Loss of Time from Duty during the month of August 1978, as follows:
August 1978 - 2, 7, 8, 9, 14, 15, 16, 21, 23, 24, 28, 29
Suspension to be served 10/1/78 through 10/15/78.
- 2/9/79 - Suspended 30 days - Excessive Loss of Time from Duty during the month of January 1979, as follows:
January 1979 - 3, 4, 5, 24, 25
Suspension to be served from 3/1/79 through 3/30/79.

At the time of the hearing, Claimant had two years service with Carrier. At such hearing his attendance record for July of 1979 was adduced in evidence. It reads as follows:

July 10 - Reported Sick
July 11 - Sick
July 23 - Reported Absent
July 24 - Reported Absent
July 25 - Sick

The question before us is whether or not Claimant was "unavoidably kept from work within the meaning of Rule 18, which reads:

"In case an employee is unavoidably kept from work he will not be discriminated against. Any employee detained from work on account of sickness or any other good cause shall notify his foreman as early as possible, by telephone, telegraph, messenger, or by United States Mail. Employees absenting themselves for five (5) days without notifying the Management shall be considered out of service and dropped from the rolls and seniority roster unless a justifiable reason can be shown as to why notice was not given, or sent in.

An employee who is absent from work for any cause and has not arranged for a definite time to resume duty, will not be permitted to work except on approval of ranking officer, unless he gives his foreman notice of his intention to report for duty at least one hour before the expiration of the regular quitting time of the shift on which he intends to report for work. When unable to comply with the above provisions, the employee must give a reasonable excuse for his inability to do so, to the ranking officer before being allowed to return to work."

In the hearing Claimant admitted that he had falsely claimed sickness on July 25, giving as his reason: "other than sickness there is not a reliable excuse for being off work". This admitted willingness to lie in order to provide "a reliable excuse" destroys Mr. Bell's credibility, casting serious doubt upon his claim that he was sick on July 10 and 11. We further find that Carrier was justified in not accepting Claimant's proffered excuse for his absence July 23, 24 and 25, i.e. car trouble. Claimant simply assigned too low a priority to his obligation to protect his job.

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2-WT-CM-'82

The hearing accorded to Claimant all due process. The discipline was deserved.

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 22nd day of July, 1982.