

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  
(  
( Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That under the current Agreement, Car Oiler (Provisional Mechanic) Tamus Gates was unjustly suspended from the service of the Illinois Central Gulf Railroad for a period of thirty (30) days beginning Saturday, September 15, 1979 through and including October 14, 1979 as results of investigation held on Friday, August 31, 1979.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to:
  - (a) Compensate Car Oiler (Provisional Mechanic) Tamus Gates for all time lost beginning on Saturday, September 15, 1979 including any and all over-time he would have been entitled to up to and including October 14, 1979 which consists of twenty-two (22) working days.
  - (b) Compensate Car Oiler (Provisional Mechanic) Tamus Gates for three (3) additional days, including any and all over-time account being held out of service prior to the investigation without justification.
  - (c) Compensate Car Oiler (Provisional Mechanic) Tamus Gates for a total of twenty-five (25) days including any and all over-time he would have enjoyed had he not been suspended from service for thirty (30) calendar days.

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.

On August 28, 1979, Claimant Gates was notified to appear at an investigation on Friday, August 31, 1979, to determine whether he was absent without proper authority on August 21 and 22, 1979. The investigation was held as scheduled, and we summarize the evidence adduced therein.

Car Oiler (Provisional Mechanic) Gates had been employed by the Illinois Central Gulf Railroad for a period of approximately six (6) and one-half ( $\frac{1}{2}$ ) years. At the time of the incident giving rise to this claim, Claimant was employed by the

Carrier on the 7:00 AM to 3:00 PM shift with regular working days Saturday through Wednesday, rest days, Thursday and Friday.

For several days during the month of August, 1979, Claimant was under the care of Carrier's local physician, Dr. Charles R. Frazer, and subsequently missed work on various occasions due to his illness. Claimant had been prescribed a certain type of medication which taken caused drowsiness for a considerable number of hours.

Claimant had been on medication for several months prior to August, 1979, and had lost time during those months also. Thus, Carrier was aware of the medication that the Claimant was taking and the side effects it produced.

The controlling rule is Rule 23, which reads as follows:

"No employee shall absent himself from work for any cause without first obtaining permission from his foreman if possible, except in case of sickness, when he shall notify his foreman as soon as possible."

Company records reflected that Claimant was absent from August 15, 1979 through August 27, 1979; however, he was charged only in connection with the two days: Tuesday, August 21, and Wednesday, August 22. Carrier took the position that Claimant at no time requested to be marked off sick or otherwise indicated his illness prior to his return on August 25 with a doctor's certificate. Claimant testified as follows:

"Q. Mr. Gates, did you have permission to be off work on August 21st and 22nd?

A. I called Norvell on the 18th. He asked if I would be off the next day and I told him that I needed to be off two or three days since I was on this medication.

Q. When you say Norvell, are you talking about Mr. Green?

A. Yes, sir.

Q. You had permission to be absent on the 18th?

A. Yes, sir.

Q. Were you, in any way, incapacitated as to be unable to call in on August 21st and 22nd?

A. Yes sir. I took my medication early in the morning. Since May I have been going to Doctor Frazer who is a company doctor. I have had several prescriptions and all of them do about the same thing. They make me drowsy and give a feeling of depression."

Assistant General Car Foreman Norvell Green directly contradicted Claimant, swearing that Claimant did not contact him on August 18 or otherwise to advise that he would be absent because of illness on any date thereafter.

Thus, the issue is basically one of credibility of witnesses.

Under Rule 23 Claimant had the duty to notify Mr. Green of his illness "as soon as possible". Claimant does not deny that he was able on or prior to August 18 to advise Foreman Green of his intention to be on his medication which rendered him unfit for duty; therefore, Carrier was justified in holding him accountable for not notifying Mr. Green in compliance with Rule 23.

We have carefully examined the record of the investigation and find neither procedural nor substantive error. As to the propriety of the disciplinary action by Carrier, Mr. Gates, prior to this occasion, had received eight letters of warning for absenteeism. Under the circumstances we hold the discipline to be reasonable.

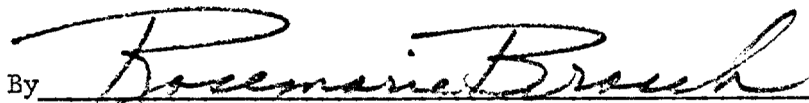
We further hold that Carrier was justified in holding Mr. Gates out of service from August 25 to August 28 because he did not present a properly completed medical form until such latter date.

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.