

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen & Oilers  
(  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Laborer Barbara Campbell, I.D. No. 175566, was unjustly suspended from the service of the Seaboard Coast Line Railroad Company on November 7, 1981, through December 6, 1981, after a formal investigation was held in the office of Mr. H. G. Swanson, Assistant Master Mechanic, on September 23, 1981. The conducting officer was Mr. D. Mobley, Trainmaster.
2. That accordingly, Laborer Barbara Campbell be compensated for all lost time, vacation, health and welfare, hospital and life insurance and dental insurance be paid effective November 7, 1981, through December 6, 1981, both dates inclusive, and the payment of 6% interest rate be added thereto.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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, Barbara Campbell, entered the service of Carrier as a laborer on April 29, 1980, at the Carrier's Cab Track repair facility in Atlanta, Georgia.

On July 5, 1981, Claimant allegedly sustained a pulled muscle in her stomach while working. Claimant attempted to report the injury to the Foreman but was unable to find him.

Claimant then went home and tried to call the Foreman, but he had already left for that day.

The next day, Claimant called and told the assistant department foreman, A. E. Clure, that she was reporting off sick because she suffered a strain. There is some discrepancy in the record as to whether she told Mr. Clure that she suffered the strain on the job or at home. Claimant was marked off sick and instructed to bring in a doctor's note upon her return to work.

Claimant saw a Doctor A. M. Davis on July 6, 1981. Claimant testified that on the evening of July 6, 1981, she brought a doctor's excuse to Mr. M. L. Sanders, Assistant Departmental Foreman, but that Mr. Sanders could not be found. She testified that Ms. Gale Barlow ran copies of the doctor's excuse and promised to give one to Mr. Sanders.

The doctor's excuse allegedly given to Mr. Sanders states that the Claimant was treated from July 6, 1980 (Claimant testified that that should have read "1981"), through July 10, 1981, and could return to work on July 11, 1981.

Claimant later returned to work on September 2, 1981, with a report from her doctor. That report contained the following statement:

"History: I hurt my stomach while lifting at work."

The form on which that report was written had been sent to the Claimant by the Carrier on July 22, 1981, to be completed by her physician.

As a result of Claimant alleging on September 2, 1981, that she was injured while on duty on July 5, 1981, Claimant was sent a notice of investigation charging her with the violation of a portion of Rule 12 relating to disloyalty and dishonesty, as well as Rule 29 of the Rules and Regulations of the Mechanical Department.

"RULE 12: Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, wilful neglect, inexcusable violation of rules resulting in endangering, damaging, or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal.

Rule 29: Any employee receiving an injury will report same to his Foreman as soon as he is able to do so.

On September 23, 1981, a formal investigation was held. As a result of the investigation, Claimant was suspended for 30 days.

The Organization's position is that by charging Claimant for violating Rules 12 and 29, the Carrier violated Rule 19 of the current and controlling agreement. Rule 19 states:

"In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his Foreman as early as possible."

The Organization argues that Claimant complied with Rule 19 in that she attempted to mark off on July 5, 1981, to Mr. Sanders but was unable to locate him. Mr. Clure testified that Claimant reported her injury to him on July 6, 1981, at which time he marked her off sick with permission. Hence, the Organization argues the Claimant did not violate any rule and, therefore, should not be discharged.

The Carrier argues that the Claimant told Foreman Clure on July 6, 1981, that the injury did not occur on the job but rather occurred in her home. Moreover, Carrier states that Foreman Sanders and Foreman Newton both spoke with Claimant, and although she advised them that she was taking medication, she made no report of an on-duty injury. Hence, Carrier concludes that the Claimant fabricated the story of the on-duty injury and, therefore, violated Rule 12.

There are numerous discrepancies in the testimony in the record. The Board finds that the hearing officer was in the best position to determine the credibility of the witnesses. It is not the Board's function to weigh conflicting evidence, and if there is a direct conflict in the evidence, the Board is in no position to resolve the conflict. The credibility of witnesses and the weight to be given their testimony is for the trier of facts to determine. If there is evidence of a substantial character in the record which supports the action of the Carrier, and it appears that a fair hearing has been afforded the employee, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established. Reasonable grounds exist to sustain the determination of guilt made by the Carrier in this case. This Board will not set that determination aside.

As Rule 12 is written, a violation subjects an offender to summary dismissal. In the case at hand, it is evident that because of some of the conflicts in testimony and the explanation offered by the Claimant, the Carrier determined that dismissal of the Claimant would be too harsh a penalty to impose. Instead, the Carrier has chosen to suspend the Claimant for a period of 30 days in order to allow her to recognize the importance of conforming her behavior to the rules. This Board will only set aside a disciplinary penalty when it appears that it was arbitrary, capricious, excessive, or an abuse of managerial discretion. In the case at hand, the Carrier has not been unreasonable in its evaluation of this case and the assessment of the penalty. This Board will not set it aside.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1984