

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 7
Parties to Dispute: (
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Electrician R. L. Ebersole ten (10) days, effective February 18, 1981.

2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician R. L. Ebersole to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electricians' rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and to expunge his 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 employes 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 was employed as an electrician at Altoona, Pennsylvania. The dispute comes to the Board with a Joint Statement of Agreed-Upon Facts, reading:

"On January 9, 1981, R. L. Ebersole was issued a Notice of Trial charging him with: 'Your responsibility for your failure to properly protect your assignment when you left Company property at 7:00 P.M., 12-31-80, without proper authority'.

"Trial was held on January 26, 1981, and following the trial, Notice of Discipline, Form G-12, was issued under date of February 17, 1981 assessing ten days' suspension.

Appeal from this discipline was made by the Local Chairman to the Manager - Labor Relations on February 24, 1981. Appeal was heard on March 18, 1981, and denied March 30, 1981.

Joint submission was requested by the Local Chairman on March 31, 1981."

The claim was denied by the Carrier's highest officer of appeals on November 12, 1981.

A transcript of the trial held on January 26, 1981, has been made a part of the record. A review of the transcript shows that the trial was conducted in a fair and impartial manner. None of claimant's substantive procedural rights were violated. We understand from the record in the case that the ten days suspension was deferred and that claimant was neither held out of service nor suffered any loss of wages or other benefits.

We find substantial evidence adduced at the trial, or hearing, in support of the charge against the claimant. It is shown that on December 16, 1980, notice was posted advising all employees at the Juniata Locomotive Facilities that they were expected to complete their eight-hour tour of duty on the work day before and the work day after each holiday, that failure to complete their tour of duty without the permission of the General or Assistant General Foreman of the respective departments would result in disciplinary action. Upon further handling, an exception was made for employees assigned to the second shift on New Years Eve, who would be permitted to sign out and leave the shop at 9:00 P.M. if they so desired, but could not leave before 9:00 P.M. unless granted permission by the General Foreman or the Assistant General Foreman.

There can be no serious contention about the right of the Carrier to determine its man-power needs, and to issue such instructions as it deems necessary to meet those needs.


There was substantial evidence that claimant did leave at 7:00 P.M., December 31, 1980, without permission of the General Foreman, the Assistant General Foreman or any other supervisory personnel. Discipline was warranted. The discipline imposed, which actually amounted to ten days deferred suspension, was not arbitrary, capricious, or in bad faith.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984