

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

Parties to Dispute: ( Sheet Metal Workers International Association  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That Carrier violated claimants contractual rights under Rule 25 of the negotiated current Motive Power and Car Department Agreement.
- (2) That 30 demerits assessed against claimant T. C. Sipes on October 23, 1981 by Carrier be rescinded and his record be cleared of this incident.

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 a sheet metal worker at Carrier's Locomotive Service Facility, Bakersfield, California. On the date involved herein he was assigned to a relief position, with starting time of 11:00 P.M. On September 25, 1981, claimant was notified to report for formal hearing on October 19, 1981, on the charge:

"You are hereby notified to be present at the office of Trainmaster, Bakersfield, CA 9:00 AM, Monday, October 19, 1981 for formal hearing being held to develop the facts and place responsibility, if any, in connection with your alleged failure to protect your assignment as Sheet Metal Worker, 11:00 PM to 7:00 AM, Wednesday, September 23, 1981, Bakersfield Roundhouse Facility, by not reporting for duty at prescribed time and being absent without proper authority.

For this occurrence, you are hereby charged with responsibility which may involve violation of portion of Rule 810, first paragraph, reading:

'Employes must report for duty at the prescribed time and place,...They must not absent themselves from their employment without proper authority.'

And Rule B, reading:

'Employes must be conversant with and obey the rules and instructions. If in doubt as to their meaning, they must apply to proper authority for an explanation.'

"of the General Rules and Regulations of the Southern Pacific Transportation Company, as posted.

You are entitled to representation and witnesses in accordance with your Agreement provisions. Any requests for postponement should be directed to the undersigned, in writing, stating the reason therefore."

The investigation was conducted as scheduled. Claimant was not in attendance, but the Local Chairman of the Organization was present. The record does not show that any request for postponement of the hearing was made by claimant. In the investigation, the Local Chairman stated:

"I talked to Mr. Sipes about it and I asked him if he wanted a representative down here to represent him and he said he didn't think he needed one. He also told me he might not be here today being as it was his day off."

The hearing was conducted in absentia, following which claimant was notified on October 23, 1981, that his record was assessed thirty demerits.

In the investigation the Local Chairman objected (1) because of more than one carrier official being present, and (2) because of the accused not being present. We do not consider the first objection to be of sufficient significance to invalidate the proceedings or of denying any substantive procedural rights of claimant. As to the second objection, this Board has issued numerous awards upholding discipline where hearings were held in absentia. There was nothing wrong in holding the hearing in absentia in the present case. If the claimant considered it improper or an infringement upon his rights for the hearing to be held on his rest day, he should have attended, as instructed, and then filed a grievance under the applicable agreement.

In the investigation substantial evidence was adduced showing that claimant did not report at his starting time of 11:00 P.M., three attempts were made to telephone him at his regular calling place, one at 11:05 P.M., one at 11:20 P.M., and another at 11:50 P.M., all without success. Another sheet metal worker was then called for duty from the overtime board in place of claimant. The Roundhouse Foreman testified that about 1:30 A.M. the claimant called him (the Roundhouse Foreman) and stated that he had overslept; that he told claimant that attempts had been made to contact him, and claimant stated that he was not at his house, but at another person's house.

There is no dispute but that claimant's lateness in contacting the Roundhouse Foreman (1:30 A.M.) was because of claimant oversleeping. The Organization relies upon Rule 25 of the Agreement, which reads in part:

"(a) An employe detained from work account of sickness or for other cause, shall notify his foreman as early as possible...

(b) If an employe is unavoidably kept from work, he will not be unjustly discriminated against."

The question to be decided is whether by oversleeping an employe is "unavoidably kept from work". This question has been answered in the negative by prior awards of this Board. In Award No. 8411, involving the same Carrier, and another craft the Board held:

"Sleeping too late does not constitute an unavoidable reason for tardiness. Second Division Award No. 7067. (Eischen)"

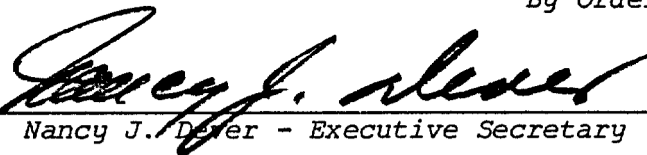
We agree with the reasoning in Awards 8411 and 7067. The discipline imposed of thirty demerits was not arbitrary, capricious or in bad faith.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

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