

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

That the Seaboard Coast Line Railroad Company violated the controlling agreement when Carman R. L. Williams, Lakeland, Florida was assessed ten (10) days suspension commencing September 14, 1980 and ending September 23, 1980, both dates inclusive.

This suspension being due to the fact that he allegedly failed to properly get permission to be off.

The Seaboard Coast Line Railroad Company violated Carman Williams's rights as outlined under Rules 18 (b) and 19 of the current working agreement.

The Seaboard Coast Line Railroad Company violated Rule 32 of the current working agreement and is guilty of procedural defects.

The Seaboard Coast Line Railroad Company used un-negotiated rules, a part of which circumvent, modify or change the intent and meaning of the working agreement.

The Seaboard Coast Line Railroad Company violated the intent of Rule 32 and the interpretation placed on holding a fair, unbiased investigation in that the Master Mechanic acted as accuser, prosecutor and judge.

The Seaboard Coast Line Railroad Company set a double standard by suspending Carman Williams-but not others-for the same offense, when all should have been governed by the same process of marking off.

That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carman R. L. Williams for each day's pay that he lost due to this violative action; further, that he receive all other benefits that he would have accrued or received in a normal flow of circumstances as though he had never been dismissed.

Findings:

The Second Division of the Adjustment, 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, R. L. Williams, a Carman at Lakeland, Florida, for approximately 15 years, failed to report to work on Sunday, August 3, 1980, and Sunday, August 10, 1980, and did not notify his supervisor. As a result of this unauthorized absence, Claimant received a notice of investigation charging him with violations of Rule 26 and a portion of Rule 1 of the Rules and Regulations of the Mechanical Department of the Carrier. Claimant was also charged with violation of Master Mechanic's Bulletin dated February 26, 1980.

The relevant portion of Rule 1 reads:

"To enter or remain in the service is an assurance of willingness to obey the rules."

Rule 26 reads as follows:

"Employees must not absent themselves from their duties without permission from the proper authority."

The Master Mechanic's Bulletin reads:

"Employees are expected to report to work on time with regularity. Employees should not leave their job without permission from their foreman. An employee delayed from work on account of sickness or any other good cause should notify his foreman as early as possible."

Following an investigation held on the property on August 27, 1980, Claimant was found guilty as charged and was suspended for ten days commencing September 14, 1980, and ending September 23, 1980.

The Organization contends that the Claimant did not receive a fair and impartial investigation because Master Mechanic Brigman acted as accuser, prosecutor, and judge.

The Organization further contends that the Carrier failed to meet its burden of proof in establishing the Claimant disobeyed the rules with regard to unauthorized absences. In this regard, the Organization argues that the Carrier has not provided proper instruction or proper understanding of the marking off system at Lakeland. Furthermore, the Organization argues that it is especially difficult to mark off on weekends as there is no one to answer the telephone when an employe calls in.

This position of the Organization is supported by the testimony of General Foreman W. T. Whale who stated that the employes usually call and mark off through the Engine House Foreman but that there is no one on duty in the Engine House on the weekends. Consequently, many of these calls from absent employes may not be received.

The Claimant testified that on August 3, 1980, he called in three times to mark off but no one answered the telephone. Regarding the August 10, 1980, absence, the Claimant testified that in anticipation of not being able to reach anyone to mark off, he told Carman McAlpin to tell the foreman that he would be not be in. Claimant further testified that he did call in on August 10, 1980, to mark off but that "once again, no one answered the telephone." Claimant's testimony is supported by a letter dated August 12, 1980, which acknowledges that Claimant's foreman, J. T. O'Neal, was advised by Mr. McAlpin on August 10, 1980, that Claimant would not be in that day.

The Carrier contends that the facts adduced during the investigation clearly establish that the Claimant was absent without permission on August 3, 1980, and August 10, 1980. The Carrier argues that the Claimant produced no evidence that he tried to call the Engine House to mark off. Additionally, the Carrier argues that Claimant was afforded a fair and impartial investigation.

After a careful analysis of the testimony, this Board finds that the Claimant cannot properly be found guilty of all of the charges leveled against him. It is well established that in discipline cases, such as this, the burden of proof must be sustained by the Carrier and the evidence must be substantial and demonstrate clearly that the employee is guilty of the charge leveled against him. (See Award 6957.) This, the Carrier has failed to do. The Claimant testified that he called in to mark off on both Sunday, August 3, 1980, and Sunday, August 10, 1980. This testimony of the Claimant was not refuted or rebutted in any way by the Carrier. In fact, Mr. Whale testified that there is no one to answer the phone on weekends. As, admittedly, no one was in the Engine House to receive the calls on the two Sundays, the Carrier cannot meet its burden of proof that the Claimant did not call in to mark off. Thus, the suspension assessed against the Claimant was unreasonable.

However, once the Claimant was unable to properly mark off, he did have the responsibility of informing his foreman of the reasons for his absence immediately upon his return to work the following day. For his failure to immediately notify his foreman of the reasons for his absence, Claimant should receive a warning notice advising him that any further violations will lead to more severe discipline. Claimant should understand that in the event that the system prevents him from properly marking off on a given day, he has a responsibility to immediately notify his foreman upon his return to work. He did not do this, as a matter of fact, the testimony reveals that his foreman had to approach him several hours later in order to find out the reason for his absence.

Consequently, the ten-day suspension assessed against the Claimant shall be reduced to a written warning notice as the suspension was too severe a penalty for the Claimant's behavior under the circumstances. Claimant is to be reimbursed for all lost pay as a result of the wrongful suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leves - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984