

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

(International Brotherhood of Electrical Workers
(System Council No. 7
Parties to Dispute: (National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) unjustly suspended Electrician Earl Polvi from service 45 days, effective March 31, 1983; Chicago, Illinois.

2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Earl Polvi 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 Electrician's 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 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, Electrician Earl Polvi, entered Carrier's service on January 16, 1976. On February 12, 1982, the date of the incident involved in this case, Claimant was employed as an electrician in the Engineering Department at Chicago, Illinois.

On the morning of February 12, 1982, Claimant and a fellow electrician, Mr. Antonio Sandoval, requested permission from their foreman, Mr. R. Corcoran, to go to the CON-AM Credit Union during their lunch period. Mr. Corcoran replied that he did not care what they did during their lunch period. Claimant's normal lunch time was 11 a.m. to 11:30 a.m.

At approximately 12:25 p.m. on February 12, 1982, Claimant and Mr. Sandoval were observed at the Chicago Union Station by two Engineering Department officials, Messrs. Nedzesky and Walbrun. When questioned regarding their presence at the two locations by the two supervisors, they stated that they had permission to go to the credit union. Claimant and Mr. Sandoval were instructed to return to work immediately, which they did. Mr. Nedzesky then telephoned Mr. Corcoran, the Claimant's supervisor, and asked him if he knew where the Claimant and Mr. Sandoval were. Mr. Corcoran replied that he thought they were working on the North Door Track 9 of the Engine House. Nedzesky said that they were not and he had just found them at the Chicago Union Station.

As a result of the above-described incident, Claimant was notified to appear for formal investigation in connection with the following charges:

"Violation of Rule I, K and L; wherein you absented yourself from duty without proper authority and you failed to report for duty at the designated time and place, you failed to attend to your duties during the hours prescribed. Also, you failed to comply with the instructions from your supervisor and additionally, you were dishonest and insubordinate in that on February 12, 1982, at 12:25 p.m., a time when you were required to be doing productive work of your craft (IBEW) on Door D-9--North at the 16th Street Engine House, during your assigned hours of 11:30 a.m. to 3:30 p.m., you were observed at the train boarding area (Track 28) of the Chicago Union Station, 210 South Canal Street, by Project Engineer M.C. Walbrun and myself.

Furthermore, you were dishonest and insubordinate when you knowingly stated to Mr. Nedzesky that your immediate supervisor, ARSA II Foreman, R. Corcoran, authorized you and Mr. Sandoval to walk to and from the Chicago Union Station during your assigned working hours for the purpose of doing personal business at the CON-AM Credit Union. When, in fact, Foreman Corcoran had instructed you and Mr. Sandoval to perform work in the Diesel Shop immediately after your assigned lunch period of 11 a.m. to 11:30 p.m.

Foreman Corcoran had not authorized you or Mr. Sandoval to abandon your assigned duties; not did he authorize you or Mr. Sandoval to walk to the Chicago Union Station to go to the credit union during your prescribed working hours, and he was unaware that you and Mr. Sandoval had failed to report to your assigned duty at the Diesel Shop as instructed.

You were further dishonest and insubordinate when, after listening to your explanation of your presence at Chicago Union Station, Mr. Nedzesky asked you a second time if Mr. Corcoran gave you and Mr. Sandoval permission to walk to the credit union at Chicago Union Station and you again said, "Yes"; knowing that you had not received Mr. Corcoran's authorization.

RULE I STATES:

Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.

"RULE K STATES:

Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor.

RULE L STATES:

Employees shall not sleep while on duty, be absent from duty, exchange duties, or substitute others in their place without proper authority."

Following a hearing held on the property on March 18, 1982, Claimant was found guilty of the charges and received a 15-day suspension effective April 5, 1982, and a 30 day suspension held in abeyance for one year.

The Organization makes two contentions: one procedural and one substantive.

The procedural argument is that the investigation violated Rule 23 of the controlling agreement because it was conducted in an overbearing manner calculated to intimidate the witnesses from testifying in support of the Claimant. Rule 23 states:

"(a) Employees who have been in service more than 60 calendar days shall not be disciplined or dismissed without a fair and impartial investigation, unless such employees shall accept such dismissal or other discipline in writing and waive formal investigation. Such waiver must be made in the presence of a duly accredited representative of the organization. The employees may be held out of service pending such investigation only if their retention in service could be detrimental to themselves, another person, or the Company."

Substantively, the Organization submits that the Carrier failed to meet its burden of proof to convincingly demonstrate that the Claimant is guilty of the offense upon which his disciplinary penalty is based. Furthermore, the Organization contends that the Carrier's disciplinary action is unjust, lacking in good faith, arbitrary, and capricious.

The Carrier contends that the Claimant was accorded a fair and impartial investigation. Furthermore, the Carrier submits that the evidence adduced at the investigation supported a finding of guilt and the discipline imposed was commensurate with the seriousness of the offense.

The Carrier argues that permission to be off the property at one time (11 a.m. to 11:30 a.m.) does not constitute permission to be away at any different time.

The Carrier contends that the 15-day suspension and the 30-day suspension held in abeyance for one year were not excessive or arbitrary punishments for the employee.

After a thorough examination of the record, this Board concludes that the hearing was fair. The Claimant was allowed to call the witnesses, and the investigation was completed in the proper manner and Claimant did not suffer as a result of that hearing.

However, the Board concludes that the Carrier failed to meet its burden of proof with regard to the charges against the Claimant. Claimant did not lie about having permission to go to the credit union. The facts of the investigation show that Claimant and Mr. Sandoval did inform Mr. Corcoran that they were going to the credit union in their one-half hour lunch break and that Mr. Corcoran did not object. The investigating officer testified that employees have the right to leave the property during their assigned, unpaid lunch hour.

While there is insufficient evidence to support a finding of guilt of the serious rule violations charged in this case, the fact remains that the Claimant should have notified his supervisor that he was working through his regular lunch hour and was planning to take a later lunch in order that he be able to go to the credit union at that time. Mr. Corcoran testified that such notification is customary and expected of all employees.

It is well settled that this Board will not disturb or interfere with a disciplinary action taken by a Carrier unless the record reflects, definitely and clearly, that such disciplinary action was unjust, lacking in good faith, unreasonable, and excessive.

In this case, the action taken against the Claimant was excessive.

Consequently, this Board finds that the suspension that was imposed against the Claimant was excessive and arbitrary and shall be rescinded. However, the Claimant should have notified his supervisor that he was taking a later lunch. The Claimant is well aware of that requirement. Consequently, the suspension is hereby reduced to a written warning for the purpose of putting the Claimant on notice that in the future, he is to notify his supervisor if he works through his regular lunch and plans to take a later one.

There is no evidence in the record that Claimant has been guilty of such a rule violation before. Consequently, it was excessive to impose a lengthy suspension on him for this first offense.

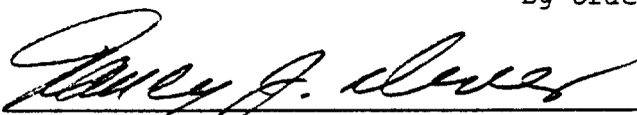
The suspension shall be removed from Claimant's record and back pay shall be awarded to the Claimant in accordance with this Award.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

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