

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
(System Council No. 15, AFL-CIO
(Green Bay and Western Railroad Company

Dispute: Claim of Employes:

1. Under the current controlling Agreement, Mr. P. Stutleen, Laborer, Green Bay, Wisconsin, was unjustly dealt with when suspended for a period of fifteen (15) days (December 23, 1982 through January 6, 1983), following hearing held on December 16, 1982.

2. That accordingly, Green Bay and Western Railroad Company be ordered to compensate Mr. Stutleen for all time lost at the pro rata rate and the mark removed from 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.

On December 13, 1982, Claimant, Mr. P. Stutleen, a shop laborer for the Green Bay and Western Railroad Company, with the assigned hours of 3:30 p.m. to 12:30 a.m., Monday through Friday, was issued a notice of investigation charging him with being absent from duty without authorization from approximately 11:57 p.m. to 12:30 a.m. on December 10, 1982. Claimant contends that he left work as usual at 12:04 a.m., four minutes after he was authorized to leave.

Following a hearing on December 16, 1982, Claimant was found to be in violation of Rule 14 of the General Regulations and Safety Rules and was suspended for 15 days from December 23, 1982, through January 26, 1983.

Rule 14 states:

"Employees must report for duty at the designated time and place. They must be alert, attentive, and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with, or substitute others in their place without proper authority."

The Organization's position is that the 15-day suspension was unjust, arbitrary, and capricious as Claimant was authorized by his superintendent to save one-half hour of his allotted lunch hour and to leave at 12 a.m., a half hour early, on a regular basis. Claimant's supervisor, Ralph Stutleen, testified that he did give Claimant permission to take a one-half hour lunch and leave at 12 a.m. Claimant testified that he has always taken a one-half hour lunch and left at midnight in accordance with the authorization of his supervisor, Ralph Stutleen.

However, Claimant did testify that he talked to Mr. M. P. Geurts, the locomotive foreman, on December 9, 1982, the night prior to the night of the incident. Geurts complained to the Claimant about the problems arising from his leaving early; specifically, there was no one on the Claimant's assignment from 12 a.m. to 12:30 a.m. each night. Claimant informed Mr. Geurts that he had been leaving early at midnight with permission.

While Mr. Geurts did not specifically order the Claimant to stay until 12:30 a.m., Geurts testified that he thought that Claimant had understood from the conversation that Geurts wanted Claimant to remain on the job until 12:30 a.m., his assigned quitting time. However, it is somewhat unclear if Claimant understood that he could no longer take an abbreviated lunch and leave early.

The Carrier's position is that Claimant 15-day suspension was fully justified by the evidence in the transcript of the testimony, including the statements of the Claimant admitting that he left early.

After a thorough review of the record in this case, this Board finds that the 15-day suspension is too harsh under the circumstances and an arbitrary abuse of the disciplinary process. It is clear from the testimony that the Claimant, with permission, had a long-standing past practice of leaving at 12 a.m. rather than 12:30 a.m. Claimant would take a shorter lunch and, therefore, was not stealing any time from the Company. His supervisor was well aware and agreed with this procedure.

Although Mr. Geurts did discuss Claimant's quitting time with Claimant the night before the incident, the testimony of Mr. Geurts and the Claimant regarding that conversation shows that there was some legitimate confusion about whether Claimant was required to remain on the job until 12:30 a.m. Claimant did not fully understand that the past practice of saving time from his lunch period and then leaving work one-half hour early had come to an end.

For this reason, this Board finds that it was arbitrary to impose the severe 15-day suspension on the Claimant. This Board hereby reduces Claimant's suspension to five days.

A W A R D

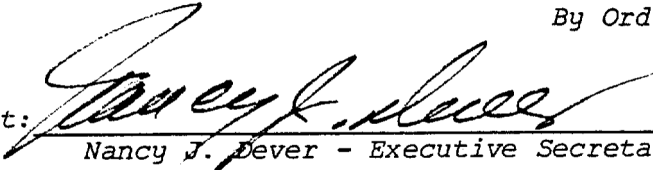
Claim sustained in accordance with the Findings.

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Award No. 9994
Docket No. 10211
2-GB&W-FO-'84

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1984.