

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 and Oilers
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(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant D. R. May, I. D. No. 111267, was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on August 2, 1982, after a formal investigation was held on July 21, 1982.
2. That accordingly Service Attendant D. R. May be restored to service at the Seaboard System Railroad Company, South Louisville Shops, Louisville, Kentucky, and compensated for all lost time, vacation, health and welfare, hospital, life and dental insurance premiums be paid effective August 2, 1982 and the payment of 6% interest rate be added thereto.

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, D. R. May, a service attendant, entered the service of the Carrier on April 10, 1976, where he worked continuously at the Diesel Locomotive Repair Facility in Louisville, Kentucky, until his dismissal on August 2, 1982. Claimant's assignment was from Monday until Friday from 7 a.m. until 3 p.m.

The undisputed facts of this case are as follows:

On June 15, 1982, at 7 a.m., Claimant called his foreman, Mr. C. N. Routt, and reported off in order to take care of his ailing mother. On June 16, 1982, Claimant reported for work on time and informed his foreman that he had to go to the juvenile court that morning. He was granted permission to go. He was gone for 3 1/2 hours that day.

It was subsequently learned by the Carrier that the Claimant was arrested on June 15, 1982, at 10:40 a.m. and again at 1 p.m. on a variety of charges and that his absence from work on June 16, 1982, was for the purpose of appearing in the Jefferson District Court in connection with those charges.

On July 15, 1982, the Claimant received a notice that he was charged with being absent from duty under false pretenses on June 15, 1982, and June 16, 1982. An investigation was held on July, 21 1982. Claimant was found guilty as charged and dismissed from the service on August 8, 1982.

The Organization's position is that the Claimant is not guilty of violating any Company rules. Claimant was marked off on June 15, 1982, in accordance with Rule 22 of the current and controlling agreement. Rule 22 states:

"An employee detained from work on account of sickness or other good cause shall notify his foreman as early as possible."

Additionally, Claimant was granted permission to be off work on June 16, 1982.

The Organization further contends that Claimant's dismissal was arbitrary, capricious, and an abuse of managerial discretion.

The Carrier's position is that the record contains substantial and convincing evidence that Claimant is guilty of being absent from duty on June 15 and June 16, 1982, under false pretenses and that the seriousness of this offense fully justifies the disciplinary action taken against him.

After reviewing the record in this case, this Board finds that Claimant was properly found guilty of being absent from duty under false pretenses on June 15 and June 16, 1982. The record clearly demonstrates that the Claimant's mother was ill and that Claimant marked off at 7 a.m. to take care of her. However, the police report, evidencing Claimant's arrests on June 15, 1982, shows that Claimant did not stay home with his mother on that date. Claimant admitted, at the investigation, that he left home when his father came home some time early on the morning on June 15, 1982. When asked why he did not report to work when his father returned home, Claimant responded that "it was too late, and I couldn't find my I.D. card; so, I decided to take the rest of the day off." Thus, it is clear that the Claimant was properly found guilty of being off under false pretenses on June 15, 1982.

Claimant was also found guilty of being off under false pretenses when he left work on the morning of June 16, 1982, for the purpose of attending juvenile court. At the investigation, Claimant admitted that he told his foreman that he was going to juvenile court but that he actually attended Jefferson District Court to answer the charges resulting from his arrest the day before.

It is fundamental that an employer must be able to rely on the basic honesty of its employees. The Carrier in this case has the policy of allowing employees to take time off from work when they notify the Carrier as to the reasons for the request for the time off. The Carrier must be able to rely on the employee to give the Carrier the true reason for the request for time off. If the Carrier receives dishonest information in terms of requests for time off, then the Carrier will begin to suspect the employee's honesty in other areas of employment. Therefore, once an employee begins to show an inability to be honest with his/her employer, the employer has a legitimate reason to dismiss the employee.

It is well settled that this Board may not substitute its judgment for that of the Carrier's in disciplinary matters unless the Carrier's action is so arbitrary and capricious or fraught with bad faith as to amount to an abuse of discretion. The Claimant in this case has been disciplined on several occasions in the past and was previously dismissed in 1978 but was restored to service on the basis of leniency. Taking all of the facts into consideration, including the Claimant's past record, this Board finds that the Carrier's action of dismissing the Claimant in this situation cannot be said to be arbitrary, capricious, or fraught with bad faith. This Board finds no reason to set aside the action of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of August, 1984.