

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Fireman & Oiler Felix Gray was unjustly suspended and dismissed from service of the Carrier following investigation held on September 30, 1981.
2. That, accordingly, the Carrier be ordered to make the aforementioned Felix Gray whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten [10%] percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

Findings:

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The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 discharged from service of the Carrier following a formal investigation on the charges that Claimant failed to comply with Carrier Rules of Conduct I, K, L and P, and Rule 30(a) of the controlling agreement which provide as follows:

"Rule I: 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 criticisms and loss of good will;"

"Rule K: 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: Employees shall not...be absent from duty...without proper authority;"

"Rule P: Employees will not be permitted to engage in outside activity which affects their availability for duty or efficiency on duty."

"Rule 30(a): Employees shall not absent themselves from their assigned positions for any cause without first obtaining permission from their supervisor. In cases of sickness, emergencies or when the supervisor cannot be located, they shall notify their supervisor or another person in authority as soon as possible."

The record in the instant case discloses that on August 17, 1981, the Carrier was notified that Claimant would be unavailable for service until August 28, 1981, due to the fact that he was incarcerated as a result of a shooting incident during his off-duty hours. Claimant failed to report for duty on August 28, nor did he notify the Carrier prior to that date that he would be unable to return at the expected time. The Claimant testified that his sister notified the Carrier on September 10, 1981 that Claimant remained incarcerated; the Carrier contends that it has no record of the call. Claimant returned to work on September 24, 1981 after posting \$10,000 bond. At that time, he was held out of service for his "unauthorized absence." On September 28, 1981, Claimant was notified to appear for formal investigation on September 30, 1981 in connection with the charges that the Claimant violated Carrier's Rules of Conduct I, K, L, P and Rule 30(a) of the controlling agreement.

The Organization contends that this Carrier's action in dismissing Claimant was unjust, arbitrary and capricious. Specifically, the Organization asserts that (1) Claimant was denied a fair and impartial trial in accordance with due process particularly in view of the fact that Claimant was held out of service pending formal investigation, and that (2) the charges against the Claimant were not proven by the Carrier.

Upon a thorough examination of the record, the Board concludes that the Claimant received a fair and impartial investigation in strict accord with Rule 25, the applicable discipline rule of the controlling agreement. Pursuant to Rule 25, Claimant was given written notice of the charges against him. Moreover, despite the Organization's assertions, the Carrier was justified in withholding Claimant from service pending investigation under Rule 25, which states in pertinent part:

"...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."

With respect to the merits, the Board finds the evidence overwhelmingly substantial in support of the Carrier's charges herein. It is undisputed that Claimant failed to report for duty or notify the Carrier of his continued absence; it is also uncontradicted that Claimant, by his own actions made himself unavailable for duty (See Third Division Award No. 12993).

In view of the fact that no procedural or substantive rights of the Claimant were violated, we find that the Carrier did not abuse its discretion in dismissing the Claimant from service, and we must thus deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1984.