

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Brotherhood of Fireman and Oilers
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(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Laborer J. M. Walker, I. D. No. 163942, was unjustly suspended from service of the Seaboard System Railroad on January 2, 1983, through January 31, 1983, both dates inclusive, after a formal investigation was held in the office of Mr. C. E. Hendrix, Asst. Shop Superintendent, on November 24, 1982.
2. That accordingly, Laborer J. M. Walker be compensated for all lost time, vacation, health and welfare benefits lost, hospital, life and dental insurance premiums be paid effective January 2, 1983, through January 31, 1983, both dates inclusive, and the payment of 10% 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.

The Claimant, J. M. Walker, entered the Service of Carrier as a laborer at Carrier's Diesel Locomotive Repair facility in Waycross, Georgia on August 17, 1972.

On November 19, 1982, Claimant received notice that he was being charged with excessive absenteeism and tardiness having been absent: "5-17, 7-31, 8-10, 8-24, 9-14, 10-5, 10-19, 11-9," and "tardy without permission on 8-12, 9-2, 9-8, 9-11, 10-12." As the result of a formal investigation on November 24, 1982, Claimant was found guilty of violating Carrier's Rule 26 which provides:

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

The Carrier argues that Claimant was absent or tardy as charged in the investigation and the discipline of 30 days suspension was appropriate. The Organization maintains that Claimant was improperly suspended and that the Carrier violated Rule 19 of the current working agreement between the Organization and Carrier. Rule 19 provides:

"In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work account of sickness or for any other good cause shall notify his Foreman as early as possible."

It is clear from examination of the record that Claimant was absent or tardy on the days specified in the Charge. However, the record also supports the Organization's position that Claimant had his spouse notify his direct supervisor on the days for which he was charged with absenteeism, that he was detained from work on account of sickness.

Reading Rule 26 and Rule 19 in pari materia, the Board construes Rule 26 as inapposite to the charge of Claimant's absences under the facts of this case. On those dates where he reported in absent, Claimant did not report to work and then leave the property, or appear only in the morning or the afternoon for work, or walk off the job for long periods of time. The Board finds that at no time did Claimant fail to be in technical compliance with Rule 19. If Carrier had desired to follow-up Claimant's assertion of illness for verification purposes with which this Board would be in full accord, a physician's report or examination could have been requested. Carrier may also have issued a written warning to Claimant that the manner by which he gave "notice" under Rule 19 was considered by Carrier to be insufficient. Instead, Claimant's supervisor simply told Claimant's spouse he would "...mark him off...", and then proceeded to write up Claimant's time card as "absent without permission." Claimant's compliance with Rule 19 prevented his absences from amounting to a violation of Rule 26.

The record does reveal that Carrier's charge of unauthorized tardiness were uncontested. Claimant responded to the investigating officer as follows:

"Q. Why were you tardy?

A. Well I caught on State Street a couple of times by a train and I had a dead battery one time and I finally got it jumped off, all right, and I got proof of that because Butch Douberly jumped me off at the Enginehouse before I would go home, then I bought a new battery. It's just been like that.

"Q. Why was it always on your first work day back?

A. I don't know.

Q. In other words you don't have any reason, reasonable answer why that it is always on your Mondays that you were tardy?

A. No sir."

(Emphasis supplied).

In view of the Board's finding that the charge of excess absenteeism was not established, the discipline assessed is excessive for the offense committed. Accordingly, the suspension of thirty (30) days is hereby reduced to twenty (20) days, and Claimant shall receive back pay only for the ten (10) days lost.

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 22nd day of August 1984.