

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That, under the current Agreement, the Baltimore & Ohio Railroad Company unjustly dismissed from service Machinist Gregory Carter, from the date of March 6, 1980.
2. That, accordingly, the Baltimore & Ohio Railroad Company be ordered to reinstate Machinist Gregory Carter to his former position, compensate him for all time lost, from March 6, 1980 until restored to service, with seniority unimpaired, made whole for all vacation rights, and payment for Health and Welfare and Death Benefits, under Travelers Insurance Policy GA-23000 and Railroad Employees' National Dental Plan GP-12000.

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 claim protests the dismissal of the Claimant for alleged unauthorized absence from assignment and falsification of daily service card.

The Claimant was employed as a Machinist on a 3:00 to 11:00 p.m. shift at Curtis Bay Coal and Ore Pier. On March 5, 1980 he worked an assignment rehanging counterweights from 3:00 p.m. to some time between 8:15 and 9:00 p.m. From approximately 8:15 until 11:00 p.m. the Superintendent of Maintenance looked for and was unable to locate the Claimant on the property. Concluding that the Claimant had left the property, the Superintendent charged him with unauthorized absence and falsification of time card.

The Claimant asserts that he was on the property until the end of his shift. According to the Claimant, upon completion of the rehangng job at 8:30, he took the truck and equipment back to the shop and then decided to resume his routine task of checking the car pushers. He remained at the car pushers, he said, until the end of the shift. Although several witnesses corroborated the fact that he was on the property at the end of the counterweight rehangng job at about 8:30, there was no corroboration of his testimony with respect to his whereabouts after that.

The Organization argues that there is not substantial evidence to support a finding that the Claimant was absent from the property. The fact that the Superintendent could not locate the Claimant, it says, does not establish that he was absent. The Organization argues further that the Carrier improperly relied on the Claimant's past record to assess discipline.

The Carrier asserts that the Superintendent's testimony alone is sufficient to support the charge and that its resolution of credibility cannot be reversed.

After careful review of the record, the Board concludes that the Claimant has not convincingly accounted for the last two and a half hours of his shift. That there is some conflict as to when the Superintendent noticed his absence, is not material. What is clear is that there is no credible support for the Claimant's explanation of his whereabouts after 8:30. We conclude that the Carrier properly resolved the credibility conflict on this point and that the charge has been sustained by substantial credible evidence.

We find, however, that the penalty imposed was unreasonable and excessive. Although the Carrier has made reference to a past record, there is no support for its assertion that it relied upon the Claimant's past record in assessing the discipline. We are persuaded that the Carrier based the discipline on this instance of misconduct alone, and that the dismissal was unwarranted.

Although the Carrier maintains in its Submission that a prior ten-day suspension for the same offense justified dismissal, there is no record basis for this conclusion. The Carrier does not indicate when the prior suspension occurred, nor does it explain any of the details surrounding that prior offense. Without these specifics, we cannot conclude that the Claimant's conduct as an employe had worsened to the point where no further penalty other than dismissal was justified.

We must, then, determine what is a fair and reasonable penalty under the circumstances. The Organization has not disputed that the Claimant was in fact previously suspended for the same kind of offense as that committed in the present instance. Walking off the job without permission is a serious infraction. It defies authority and it deprives the Carrier of needed services. Accordingly, we find that a thirty-day suspension is a reasonable penalty.

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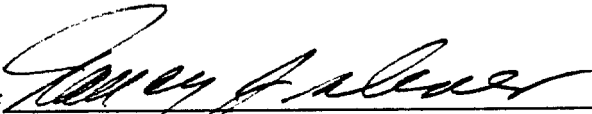
Award No. 10174
Docket No. 9630
2-B&O-MA-'84

A W A R D

The Agreement was not violated insofar as the offense alleged is concerned, however, the penalty was excessive. The Claimant shall be reinstated to his former employment and he shall be compensated for all wages lost beyond thirty days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.