

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Metro-North Commuter Railroad
(Consolidated Rail Corporation)

Dispute: Claim of Employees:

That under the current Agreement, the Consolidated Rail Corporation (Conrail) unjustly reprimanded Electrician Gary Stafford effective March 24, 1981 and accordingly should be ordered to expunge his record of the charges and discipline.

Findings:

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.

The Claimant was employed as an Electrician during March, 1981 at the Carrier's facility in Harmon, New York.

Following a hearing held on April 14, 1981, the Claimant was assessed a disciplinary reprimand for leaving the Shop during his tour on March 10, 1981 in willful and deliberate disregard of Shop Manager, E. D. Dever's instructions that were issued on August 22, 1980.

On March 10, 1981, the Claimant's tour of duty was 8:00 a.m. to 4:00 p.m. It is undisputed that in taking his lunch break, the Claimant left the Carrier's property on March 10, 1981 at 12:00 noon and returned approximately 16 minutes later.

Shop Manager Dever's instructions which were dated August 22, 1980 stated that since the Carrier provides:

"a paid lunch period all employees are required to remain on company property during their respective tour of duty."

The record discloses that historically, the Carrier has permitted employees to leave the property during their paid lunch periods. It was not until August 22, 1980 that Shop Manager Dever's instructions were posted on the bulletin board. The instructions were posted for 2 days, after which they were not seen again. Thereafter, the Carrier allowed the employees to leave the property for their lunch breaks for a period of 7 months by remaining silent when they did so. Except for the 2 day period in August, 1980, the practice of permitting employees to leave the property to take their paid lunch breaks has been in effect for many years. The failure on the part of the Carrier to enforce Shop Manager Dever's instructions for a period of 7 months from the posting of the instructions indicates an acquiescence by the Company in the practice of permitting employees to leave the property to take their lunch breaks. Furthermore, such failure by the Carrier to enforce Shop Manager Dever's instructions was reasonably relied upon by the employees as an acquiescence or concurrence in the practice. In light of such concurrence by the Carrier, it is unreasonable for the Carrier to re-institute the instructions without advance notice to the employees, so as to give them the opportunity to comply with the instructions. To say the least, it is unfair to post observers who saw the Claimant leave the property on March 10 and then proceed to file charges against him for the commission of an alleged offense.

The Claimant acknowledged that he did not have permission from his Supervisor to leave the property on March 10. However, consistent with the practice which, by virtue of the Carrier's silence, it acquiesced in, he "didn't know [he] had to have permission". Furthermore, the Claimant was not aware of Shop Manager Dever's instructions that were posted on the bulletin board on August 22, 1980; he acknowledged that he did not make a habit "of reading the bulletin board". Even if the Claimant had been aware of the posting of the instructions on August 22, 1980, and was in the habit of reading notices posted on the bulletin board, he could have reasonably inferred that the failure by the Carrier to enforce the instructions for a period of 7 months indicates that the Carrier concurred in the resumption of the practice. The Board therefore concludes that the claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1985.