

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

Parties to Dispute: (District Lodge No. 19
(International Association of Machinists and
(Aerospace Workers, AFL-CIO
(
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

1. That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Carrier) improperly assessed Machinist R.E. Kidwell (hereinafter referred to as the Claimant) with ten (10) demerits.

2. That, accordingly, the Carrier be ordered to remove ten (10) demerits from the Claimant's personal record file.

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 has been employed by the Carrier as a machinist since January, 1972. On November 15, 1982, Carrier notified Claimant to attend formal investigation in "...connection with your being uncooperative when you withheld information and failed to give all the facts concerning your reason for being absent from work on November 11, 1982 from 5:30 a.m. to 7:00 a.m....". Claimant left his usual 11:00 p.m. to 7:00 a.m. shift with permission on November 11, 1982 at 5:30 a.m., after having informed his foreman that he was sick.

The next day after Claimant had left work with permission, he was presented with a form titled "Lay Off and Report of Time Lost". The evidence establishes that this form was filled in by Claimant's foreman, and it stated that the reason for time off was that Claimant was sick. A question on the form asks whether the employe is "losing time as a result of job related illness or injury". The foreman checked the box next to the question which was marked "No". The Claimant signed the form, and to the right of his signature wrote in the words, "Job related in question".

The Organization contends that Claimant was denied a fair and impartial investigation in that the charging letter was vague and conclusory, and that the Hearing Officer improperly overruled the objections of the Claimant's Representative. This assigned error by the Organization is without merit. As the Carrier acknowledges, the notice could have been worded in a more straightforward, less conclusory fashion. However, this Board is of the opinion that the charging letter was not fatally defective by the failure to insert the word "allegedly" before the rule violation as charged. The notice details the date, time and substance of the violation(s), as well as the specific rules so violated. The notice is sufficient to apprise Claimant of the charge, and to allow for investigation and defense of same. The Carrier was still required to meet its burden that the Claimant was guilty as charged from the evidence adduced at the investigation itself. The Organization is to be commended for its attention to the form of the questions asked by the Hearing Officer, and the prompt objections raised by the Representative.

However, upon considered review of all the evidence of record, this Board finds that such error was harmless. There is in fact no conflict in the evidence of record. When asked if the sickness was job related at the time he signed the layoff form, Claimant testified he responded that it was not. Pressed on the discrepancy, Claimant testified he did not know what his symptoms were, nor could he remember if his head ached or stomach hurt. All of this testimony occurred within 24 hours after Claimant left work sick. The Claimant testified that he intended the remark, "job related in question" to mean that he could not determine himself whether an illness may be job related or not.

We find that the evidence of record failed to establish violations of Rule 31-B, Form 2626 Standard, "General Rules for the Guidance of Employees" (1978), and Rule 9, Form 2629 Standard, "Safety Rules for Santa Fe Employees.". However, this Board is of the opinion that Claimant did violate Rule 14, Form 2626 Standard in failing to give all the facts in explanation of his statement on the Lay Off and Report of Time Lost, that his time off was job related in question. We may assume that an employee rule violation is worthy of some degree of disciplinary measure. Claimant was clearly confused about the nature and source of his sickness in his explanation of the form's irregularities. However, he should have been more forthright in the description of the symptoms which necessitated his leaving his normal shift 1-1/2 hours early. The discipline assessed shall be modified in accord with our finding of a Rule 14 violation only, to an assessment of 5 demerits, and Claimant's personal record shall be so noted.

Form 1
Page 3

Award No. 10269
Docket No. 10546
2-AT&SF-MA

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 20th day of February 1985.