

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

Parties to Dispute: (Savatore DiBenedetto
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(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company failed to make a reasonable accommodation or to attempt a reasonable accommodation of the religious beliefs and practices of non-journeyman Carman Salvatore DiBenedetto, in violation of the duty imposed by the Equal Employment Opportunity Act of 1972, 42 U.S.C. Section 2000e(j).
2. That the Missouri-Kansas-Texas Railroad Company violated the terms of the controlling agreement and the Railway Labor Act when it dismissed non-journeyman Carman Salvatore DiBenedetto by certified mail, October 28, 1981.
3. That the Missouri-Kansas-Texas Railroad Company be ordered to reinstate non-journeyman Carman Salvatore DiBenedetto and pay him for all time lost, and any and all benefits he would have been entitled to receive since October 23, 1981.

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.

This case came about after the Claimant, who had been employed since August 3, 1978, told the Carrier on October 16, 1981, that he would no longer work from Friday sundown until Saturday sundown because of his religious beliefs. Accordingly, he did not work on that date. Moreover, he testified at the investigation, which followed his alleged failure to protect his assignment, that his unwillingness to work future Friday/Saturdays dates would be permanent. The Carrier found, after the investigation, that the Claimant had not protected his assignment on October 16, 1981, and dismissed him from the service.

The Carrier essentially argues that, while it understands and is not without sympathy with the Claimant's wishes, it cannot accommodate his religious practices without waiving or setting aside certain provisions of the controlling Agreement.

On the other hand, the Organization argues, as is well documented in the record before us, that the Carrier had a number of ways available to it, short of dismissal, to resolve this dispute. In summary, a number of contentions are advanced which rely upon the contract and other authorities to conclude that the dismissal of the Claimant was not a reasonable action on the part of the Carrier.

The Board has thoroughly reviewed the extensive record before it and we find that the claim must fail. While the Board is not unmindful of the numerous well argued contentions advanced in support of this claim, we find that the Claimant failed to protect his job on Friday, October 16, 1981, the incident that led to this dispute. We find no contractual basis for finding that his absence is excused because of his religious convictions. Furthermore, the Claimant's announcement that he would not work his assignment on Fridays from that date on provides further substance to the Carrier's conclusion and the resultant discipline imposed.

Certainly, it is not unreasonable to argue that the Carrier has a degree of responsibility to accommodate the sincerely-felt religious beliefs of its employees. However, such a course of action is at its discretion, since it does have the right to expect its employees to fulfill their obligation to work all of the assigned work days and to protect the duties for which they were hired. There is no rule in the Agreement which entitled the Claimant special consideration because of his religious beliefs.


In the case herein, the Carrier did make efforts to accommodate the Claimant. However, Carrier could not so do without breaching or waiving key provisions of the duly negotiated Collective Bargaining Agreement, such as the seniority system or its work schedule. Accordingly, a reasonable accommodation could not be reached and the finding of the Carrier will not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1985.