

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

1. That under the current Agreement, the Consolidated Rail Corporation (Conrail) unjustly assessed a thirty (30) day suspension from service against Electrician J. K. Shaeffer, effective January 18, 1982.

2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician J. K. Shaeffer to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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 J. K. Shaeffer entered the Carrier's service on October 15, 1973, and on the date of discipline, he was employed by Carrier at the Harrisburg Locomotive Terminal.

The evidence of record shows that December 29, 1981 was Claimant's last regular work day for that work week, with his regular rest days scheduled for December 30 and December 31, 1981. Claimant's regular return day was Friday, January 1, 1982, a recognized holiday under the terms of the current agreement.

On December 29, 1981, Claimant received a written order to work the holiday on January 1, 1982 from the Assistant Shop Manager. Claimant informed the Assistant Shop Manager that he may have a possible hernia, and could possibly be in the hospital or sick, and therefore was physically unable to work. Although requested to confirm by telephone his inability to work the holiday as ordered, Claimant did not call or report on January 1, 1982. As a result, Claimant was charged with insubordination for failure to report for duty as ordered, and subsequent to formal investigation he was assessed a thirty (30) day suspension, deferred.

The issue before this Board is whether the record contains sufficient credible evidence that Claimant was insubordinate for failing to report to work on January 1, 1982 as ordered. The Board has given careful consideration to all the facts and circumstances in evaluation of Claimant's assertion that his illness relieved him of the duty to report as ordered.

The Carrier's Assistant Shop Manager testified that Claimant "...informed me at that time [December 29, 1981] of a possible hernia he may have and could possibly be in the hospital or sick so that he would not physically be able to work". The Organization urges this Board to find that Claimant complied with the Agreement, and properly notified the Carrier that he would be unable to report for work. The Organization also contends that due to Claimant's use of medication for his illness he was placed in a so-called "Catch-22" situation, i.e., either Claimant had to fail to comply with the order to report, or report for duty and commit a violation of Safety Rule 4010.

Rule 8-I-2 provides:

"8-I-2. An employee unable to report for work or detained from work for any cause must notify his shop or work location as soon as possible."

Safety Rule 4010 reads:

"Narcotic (medication or drug) and/or alcoholic beverage must not be used while on duty, or within 8 hours before reporting for duty. If necessary to use medication: (a) Explain to physician all of the details of work assignment, such as climbing, being on or about track, operating locomotive or being on or about train, operating or being on or about self-propelled, hoisting, vehicular or other equipment or supervising duties. (b) Obtain and comply with physician's advice as to performing duties if he indicates that medication contains antihistamines, barbiturates, stimulants, narcotics, tranquilizers or other such drugs. (c) Assure self before reporting for duty that you are not experiencing drowsiness, mental confusion, dizziness or other adverse effects that are likely to interfere with performing duties safely... If any such symptoms are experienced while on duty, immediately inform immediate supervisor."

Claimant's assertion that Safety Rule 4010 is "...all the defense I need..." to the charge is unsupported by the evidence of record. There is no evidence use of the medication (Tylenol with codeine) was administered pursuant to a physician's order, or that Claimant did in fact require and use such medication other than by his own testimony. Even if this Board were to assume that Claimant did in fact engage in the necessary use of such medication, there is no evidence the use of medication was such as to prevent Claimant from reporting for duty on January 1, 1982 as ordered. There is no evidence that Claimant informed Carrier of his use of the medication before, or on January 1, 1982.

This Board is of the opinion that Safety Rule 4010 does not preclude the use of all drugs or medication while on duty. If that were the case, then the language of all but the first sentence in Safety Rule 4010 would constitute mere surplusage. The Board finds that the alleged use of medication under these facts did not relieve Claimant of his duty to report as ordered.

The hearing officer stated for the record that Claimant was not charged with failure to call the Carrier on December 30, 1981 as requested by the charging officer, but rather the failure to report for duty on January 1, 1982. The Board finds that Claimant gave sufficient and timely notice to the Carrier on December 29, 1981 of his inability to report to work on January 1, 1982. The Claimant produced at hearing a note titled "Sick Certificate," dated December 29, 1981, which stated that Claimant was under a physician's care from December 30, 1981 to January 5, 1982 for epididymitis. The treating physician signed the sick certificate.

While we conclude on the record before us that Claimant had a valid medical basis for not reporting as ordered, his actions do not demonstrate concern for the smooth and efficient operation of the Carrier's service. On the night of December 29, 1981 Claimant had an appointment with his physician. A simple telephone call to the Carrier the following day to clarify his need for medical care and treatment, and confirm his absence from duty on January 1, 1982, is not excessive consideration to expect from any employee in any employment relationship. In particular, Claimant was aware of Carrier's need to have adequate coverage by its employees on January 1, 1982. Therefore, in light of all the facts and circumstances of this case, the Board finds that discipline assessed to be unjustified and unreasonable. Claimant's suspension shall be reduced to a three (3) day suspension; deferred.

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 27th day of March 1985.