

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka, and Santa Fe Railway Company (hereinafter referred to as the Carrier) improperly dismissed Machinist Pedro R. Arellano (hereinafter referred to as the Claimant) from Carrier service on October 21, 1982 as result of investigation conducted on September 16, 1982.

2. That the Carrier be ordered to compensate Claimant for all loss of wages from October 21, 1982 to date of restoration to Carrier service and with all rights and fringe benefits restored in full.

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 was dismissed after an investigation was held to determine whether or not he had accumulated the requisite number of demerits, over sixty under the Brown system of discipline in effect on Carrier. It was determined that he had accumulated seventy demerits and as a result thereof he was dismissed from the service of Carrier.

Before June 26, 1982, Claimant had accumulated, through a series of assessment of demerits and removal because of a clear record, a total of twenty demerits. On June 26, 1982, and on June 30, 1982, Claimant had called his working facility and had reported sick. He had not communicated with his Supervisors on either date. Because this was allegedly a violation of Carrier rules, he was the subject of an investigation in which he was assessed twenty demerits for the June 6 violation and thirty demerits for the June 30 violation. Claimant had waived investigation in both cases and had signed off on the degree of discipline.

The investigation which is before the Board is the investigation of September 16, 1982, which was held to determine the total number of demerits accumulated at that time. The discipline was administered per the mandate of Rule 31 of the Agreement. That rule stated in pertinent part:

"The Brown System of Discipline by Record is in effect in a majority of the departments. This system provides for (subject to the applicable Investigation Rules in collective bargaining agreements) dismissal, suspension from duty without pay for specified periods, as well as certain merits and demerits to be recorded on an employee's record as follows:

"...

"H. Employees' records will be balanced at least once every year, and more often when necessary, to keep record up to date the merits and demerits. A balance of sixty demerits subjects an employee to dismissal..."

The Brown system of discipline has been upheld by numerous Boards through time. See for example Award 22835, Third Division, Award 6382, Second Division, and Award 3823, Fourth Division.

Claimant had been a long-term employee at San Bernardino, but transferred to Richmond, California. His last two assessments of discipline came from violations established at Richmond. However, the decision letter from the last investigation came from the Superintendent of Shops at San Bernardino, the location to which Claimant had transferred. Claimant asserts this is a procedural violation in that the decision should have come from the proper official in Richmond, the site of the last infractions. The last decision only determined the number of accumulated demerits. Part of the demerits had been accumulated at Richmond and part had accumulated at San Bernardino. No pertinent provision of the applicable agreement is cited that would demand that the decision be made in either territory. Since Claimant was employed at San Bernardino it is perfectly logical that the Supervisors at that location made the decision. The Claimant had been a long term Employee at San Bernardino. Since the applicable provision of Rule 31 only gives the Carrier the right to discharge an Employee with more than sixty demerits, it is logical that if the Carrier desired to mitigate this harsh penalty, which in this case it did not, the decision could best be made by the San Bernardino Supervisor.

Claimant argues that he had been led "down the primrose path" by the Supervisor at Richmond. He indicates that he had been lulled into a false sense of security by accepting the discipline. Logically it would seem that he would not have signed off on discipline that put him over the limit for discharge purposes. However, the merits of the last two disciplines are not a proper subject before this Board. Claimant had the right to appeal the discipline under the provisions and time limits of the Agreement. He did not exercise this right. This case is quite similar to another on this same property. As stated in Award 20 of Public Law Board No. 414:

"The question of the responsibility of the claim in the act which resulted in the accumulation of demerits is not before this Board. The claimant waived formal investigation and accepted the discipline. The Organization contends that the claimant had no knowledge of the Brown system of discipline and was not aware that if he accumulated 60 demerits he would be removed from service.

"We believe that the Board has no choice in this matter. The parties have entered into an Agreement, under which, if an employee received 60 demerits he is subject to dismissal. Consequently, we find no basis to support the claim."

In the instant case the Claimant stated at the investigation that he was familiar with Rule 31 and the Brown system of discipline.

The parties have negotiated a system of discipline that has been in effect since 1923. Nothing in the applicable rules, particularly Section H, suggests such familiar touchstones as "just cause" or "equity". The rule is unequivocal, if the Employee accumulates more than sixty demerits the Carrier has the unfettered discretion to dismiss.

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 7th day of August 1985.