

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10539
Docket No. 10547
2-SSR-FO-'85

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Laborer A. W. Carswell, I. D. No. 166780, was unjustly dismissed from service of the Seaboard System Railroad on June 2, 1983, after a formal investigation was held in the office of Mr. R. D. Brigman, Jr., Master Mechanic, on May 26, 1983.
2. That accordingly, Laborer A. W. Carswell be restored to service and compensated for all lost time, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid effective June 2, 1983, and the payment of 10% interest rate be added thereto.

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 assigned as a laborer on the 3:30 p.m. to 11:30 p.m. shift on April 9, 1983, at the Carrier's diesel locomotive repair facility located in Tampa, Florida. Claimant was charged in the notice of investigation with a violation of Rule 26 of the Rules & Regulations of the Mechanical Department. Rule 26 provides:

"Employees must not absent themselves from their duties without permission from the proper authorities."

After formal investigation held on May 26, 1983, Claimant was dismissed from Carrier's service on June 26, 1983. The Carrier's Superintendent reinstated Claimant on a leniency basis to active service effective June 30, 1983. The claim of wage loss for the twenty-one days of suspension is properly before this Board.

The Organization argues that application of Rule 26 to Claimant is in direct conflict with Rule 19 of the current controlling Agreement, and that Claimant received unjust treatment after a summary investigation.

Rule 19 states as follows:

"In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

The Board finds that no conflict exists between Rule 19 and Rule 26 as demonstrated by the facts of the instant appeal. It is undisputed that on April 9, 1983, Claimant clocked-in prior to his 3:30 p.m. starting time. The record shows that after employees have clocked-in for their shift, it is customary for the employees to remain in the vicinity of the time clock to receive their assignments.

The Carrier's engine house Foreman testified that he did not see the Claimant until 4:30 p.m. in what is referred to as the "ramp area" on Carrier's property. The Foreman further testified that Claimant had not been assigned to any duties in the ramp area, and Claimant was needed to perform work in another location. When confronted by the Foreman as to his whereabouts, the Foreman testified the Claimant made no mention of any chest pains, or an urgent need to use the restroom because he was sick.

The Claimant admitted that he spent as much as twenty minutes in the restroom, but denied that he failed to tell his Foreman that he was ill. Claimant stated he felt sick when he first reported to work, but proceeded to clock-in anyway. He testified that he stood in the vicinity of the time clock for ten to fifteen minutes, but denied that it was the usual or general practice on the property for a laborer to wait at the time clock for instructions from the Foreman. The Claimant testified his duties on the ramp did not change from day to day unless the Foreman requested a different work task be performed.

The second shift Foreman testified that at 4:30 p.m. he overheard a discussion between the Claimant and engine house Foreman, and that the Claimant stated he was ill, but without reference to any chest pains. The second shift Foreman also testified that it was normal practice for the employees to wait in the immediate vicinity of the time clock to be given each day's work assignment.

The Board finds that Claimant failed to properly await instructions pertaining to his assignment, and absented himself without permission or notice to anyone. Claimant clocked-in with the Carrier at 3:30 p.m., and could properly be considered by the Carrier to have assumed the obligations and duties of his job assignment for that day's shift. The Carrier's charge is not directed at Claimant's failure to notify his Foreman that he was unavoidably kept from work in accordance with Rule 19. Rather, the charge is that once he had clocked or punched in, Claimant disappeared without notice to, or permission from, any person in proper authority.

The Board finds that there is sufficient, credible evidence in the record to establish the charge that Claimant did absent himself from his duties without permission. The Claimant's own admission of time spent away from his duties amounted to a minimum of thirty-five minutes. While the record contains evidence the Claimant eventually did receive medical treatment for hypertension, the earliest medical treatment was four (4) days after the incident in question. There is no evidence that Claimant was precluded by illness or any other cause from requesting permission to absent himself from his duties.

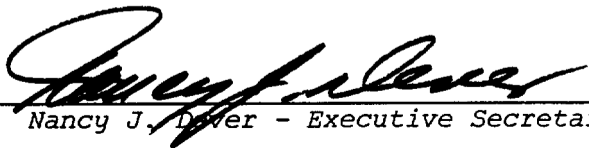
On the entire evidence of record and the Claimant's prior record of investigations and progressive discipline, the Board finds that the twenty-one day suspension was for just cause, and was neither arbitrary, capricious nor excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1985.