

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
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement Laborer Theodore T. Wilson, Jr., was unjustly suspended from service of the Seaboard System Railroad for ninety (90) days, after a formal investigation was held on July 11, 1983, commencing August 8, 1983, through November 5, 1983, both dates inclusive.
2. That accordingly, Laborer Theodore T. Wilson be restored to service at Seaboard System Railroad, Charleston Shops, Charleston, South Carolina, and compensated for all lost time, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid August 8, 1983, through November 5, 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, Theodore T. Wilson, Jr., was employed by the Carrier at its diesel locomotive repair facility in Charleston, South Carolina. On June 16, 1983, Claimant worked as a laborer on the 7:00 a.m. to 3:00 p.m. shift. Claimant was charged with violation of Rules 1, 7, 12 and 26 of the Mechanical Department for his actions and alleged uncivil conduct while on duty on June 12, 1983, and for leaving his assignment without permission prior to completion of all the assigned work.

The Organization's contention on appeal is that the Claimant was unjustly suspended in that the Carrier failed to meet its burden of proof that Claimant violated the above-referenced rules. The Carrier asserts that it conducted a fair and impartial investigation which established the facts necessary to prove that Claimant's conduct was uncivil, and that without permission and completion of his duties he left his assignment.

Claimant was called to the property on the morning of June 12, 1983, to cover the job assignment of another employee. Claimant's Supervisor testified that he searched, but did not find, the Claimant in the vicinity of the engine track. At approximately 10:25 a.m. the Supervisor located Claimant in the recently appointed Assistant Superintendent's office. Further, the Supervisor testified that once outside the Superintendent's office, Claimant argued about his right to take his lunch hour at 10:50 a.m. When told that the lunch period ran from 11:00 to 11:20 a.m., the Claimant threw his hard hat to the ground according to the Supervisor's testimony.

The Claimant's testimony is in conflict with that of the Supervisor. He stated that he was only called to work that morning, and therefore, it was necessary for him to borrow a vehicle for transportation to the Carrier's property. Claimant stated that he required use of the telephone in order to return the borrowed vehicle during his lunch hour, but that the Supervisor attempted to prevent the use of a phone for this purpose. The Claimant testified that he had in fact received no assignment from the charging officer until he was located in the office of the new Assistant Superintendent at approximately 10:30 a.m.

The evidence in the record indicates that Claimant succeeded in taking his lunch hour, and did return to the property approximately six minutes late. The Claimant testified he did not feel physically well upon his return to the property. The Claimant approached the Yardmaster and informed him that he was ill, and that he had to mark off. The Yardmaster gave Claimant permission to mark off, but although the charging Supervisor was notified he refused to give the Claimant permission to mark off. There remained one engine which had been assigned to the Claimant, but not serviced at the time he marked off.

The evidence of record established that confusion existed on the property as to the scope of the Yardmaster's authority to mark off Mechanical Department employees who were assigned work in the yard. The Yardmaster's testimony confirmed that he had received no specific written or oral instructions which granted him authority to mark off an employee who performed work under the Firemen & Oilers Agreement. Both the Yardmaster and an employee in the Mechanical Department testified, however, that the common practice on the property had been that Mechanical Department employees who worked in the physical area covered by the Transportation Department marked off under the Yardmaster. There was testimonial evidence that this practice had been used on Carrier's property in relation to car inspectors, and was a de facto practice with other employees who worked the yard area.

The Assistant Superintendent testified that Claimant had merely passed by his office that morning, and entered the office for a brief exchange of greetings and to inquire how the Superintendent enjoyed his new position at the Charleston Terminals. The Assistant Superintendent stated that this form of employee activity occurred several times a day with different people of all crafts.

The Board is of the considered opinion after close examination of the record that confusion existed on the Carrier's property as to the person with authority to grant Claimant permission to mark off. Claimant requested permission to mark off from the Yardmaster, and he was granted permission to do so. The Board finds, however, sufficient credible evidence that the Claimant failed to act in a civil manner, and to yield "willing and cheerful obedience" toward his Supervisor and Carrier's rules in the manner by which he arranged and utilized his lunch period.

This Board finds that based on Claimant's prior record and the facts of this case that the discipline assessed of ninety days actual suspension is excessive and unreasonable. Claimant's suspension shall be reduced to forty-five days actual suspension, and Claimant shall be compensated for the difference between the amount he earned while improperly suspended from Carrier's service, and the amount he would have received based upon his usual assigned working hours during the same period. Claimant's personal record shall be so noted.

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 18th day of September, 1985