

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman 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 Landy Tharpe, was unjustly dismissed from the service of the Seaboard System Railroad Company on March 1, 1983, after a formal investigation was held on December 16, 1982.

2. That accordingly, Laborer Landy Tharpe be restored to service at Seaboard System Railroad Company, Uceta Enginehouse, Tampa, Florida and compensated for all lost time, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid effective March 1, 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 employee or employees involved in this dispute are respectively carrier and employees 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.

By letter of December 6, 1982, Claimant L. Tharpe received notice to attend an investigation concerning his alleged violation of that part of Rule 12 pertaining to insubordination and Rule 26 pertaining to being absent without authority. The investigation was held as scheduled on December 16, 1982, and following the investigation the Claimant was notified that he had been found guilty as charged and was dismissed from the Carrier's service.

A review of the record as progressed on the property indicates that Claimant was aware of posted instructions that no one could leave the property without permission. Claimant's Foreman states that no permission was requested or given. Claimant admits he left the property without the knowledge or permission of his Supervisors. Claimant's guilt is admitted to the alleged violation of Rule 26.

With respect to the charges of insubordination, the record before this Board is clear. The Claimant was observed by General Foreman Ham off the property. The General Foreman determined from Claimant's immediate Supervisors that he lacked permission to leave the property. In questioning the Claimant about the violation he refused to answer the General Foreman. Claimant was informed that he must answer the question as to how long he was off the property and, in fact, would be docked for the time he was in violation. The Claimant refused to answer and by his own admission took the Fifth Amendment. He was informed that if he refused to answer he would be removed from service and charged with insubordination. The Claimant refused and the record contains conclusive and solid evidence to substantiate the charge of insubordination.

The Organization points out in support of the Claimant that he was without an Organization Representative when he was removed from service. In addition, that the removal from service was in the instant case a violation of the Agreement. This Board has carefully reviewed the Agreement and finds no contractual support by any provision that would sustain either argument (see Second Division Award 6387).


With substantial evidence to warrant conclusion of guilt and no Agreement violation on the part of the Carrier, the only issue before this Board is whether the Carrier has imposed reasonable discipline. This Board has long held the position that an Employee's service record can and should be considered to maintain a progressive environment allowing Employees to correct their actions (Third Division Awards 25251, 19037). We have further held that a past employment record should be considered in maintaining an equitable relationship between an infraction and the severity of discipline (Second Division Award 10335 and Third Division Award 25305). In the case at bar, the Claimant has a clear history of violating the same rule. Claimant has been found guilty twice before for insubordination. His actions in the instant case compel this Board to find the discipline imposed fully warranted by his past employment record. This is consistent with numerous past Awards (Second Division Awards 8159, 10322, 10335; Third Division Award 19486). This Board will not disturb Carrier's action in the instant case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1985.