

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10601
Docket No. 10738
2-SSR-FO-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant S. R. Jones was unjustly suspended from the service of the Seaboard System Railroad on September 5, 1983, after a formal investigation was held in the office of F. L. Miracle, Assistant Master Mechanic, Conducting Officer, on August 2, 1983.

2. That accordingly, S. R. Jones, Service Attendant be restored to his regular assignment at Corbin Shops with all seniority unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all lost time, September 5, 1983 through November 7, 1983, plus any overtime lost and the payment of 10% interest rate 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, Service Attendant S. R. Jones, has been employed by Carrier, Seaboard System Railroad, since June 6, 1945, at Corbin Shops, Corbin, Kentucky.

Effective September 5, 1983, the Claimant was suspended for forty-five days as a result of a hearing and investigation of the charges that the Claimant failed to protect his work assignment on June 2, 1983, and had a record of excessive absenteeism, fifteen days from February 4, 1983, to August 2, 1983.

The Organization filed a Claim on the Claimant's behalf, challenging his suspension.

The Organization contends that the Claimant was absent from work on June 2 and 3, 1983, because of a foot injury sustained on June 1, 1983. The Organization points out that the Carrier has not charged the Claimant with failing to protect his assignment on June 3, although he was absent that day.

The Organization further asserts that the Carrier did not produce facts to support its charge that the Claimant was excessively absent from February 1983 until June 2, 1983.

The Organization also maintains that the record establishes that the Claimant did not violate Rule 22, which states: "An employee detained from work account of sickness or other good cause shall notify his foreman as early as possible." The facts prove that the Claimant's stepdaughter telephoned the Corbin Shops on both June 2 and 3 to report the Claimant's injury and that he would be absent from work. Also, there is an established practice, admitted by the Carrier, that anyone may answer the Corbin Shops phone and take reports that employees will be absent; and absent employee need not speak directly with the supervisor.

The Organization therefore contends that the Claim should be sustained and the Claimant be restored to his regular assignment with all benefits and rights unimpaired, compensation for all lost time, plus any overtime and 10 percent interest.

The Carrier contends that the Claimant was afforded a fair and impartial investigation, with all of his rights and privileges.

The Carrier further asserts that the Claimant clearly violated Rule 22 by failing to notify management of his absence. Rule 22 clearly and unambiguously states that management must be notified of employee absences, yet the Claimant's Supervisor was not notified that the Claimant would be absent.

In addition, the Carrier argues that the record establishes that the Claimant was guilty of the charges. The seriousness of the violations and the Claimant's past record of excessive absenteeism justifies the forty-five day suspension, which is neither arbitrary nor capricious. The Carrier maintains that the suspension actually is lenient under the circumstances.

The Carrier finally argues that the Claim is without merit and should be denied.

This Board has reviewed the evidence and testimony in this case, and it finds that although there was some testimony that the Claimant's stepdaughter contacted the employer to notify the Carrier that the Claimant would not come to work on June 2 and 3, said testimony was not corroborated. Moreover, the Claimant's extremely poor work record from February 4 through August 2, 1983, which includes the June 2 and 3 incidents of absenteeism, makes it clear that the Carrier was justified in imposing discipline against the Claimant for excessive absenteeism.

This Board has held, on numerous occasions, that although employees may have legitimate reasons for absenteeism, the employer is not obligated to tolerate excessive absenteeism when it goes beyond reasonable limits. (See Second Division Award 8895).

As this Board ruled in Award 8238:

"The employment relationship demands, of necessity, and particularly in this critical industry that employees must diligently perform the work for which they are hired. If an employee chooses to determine unilaterally, his employment schedule, he does so at his peril."

This Board finds that the hearing that was held was impartial, and the Claimant was afforded all of his rights. Moreover, this Board finds that there was sufficient evidence elicited at the hearing to support the Carrier's determination to discipline the Claimant.

This Board will not set aside a disciplinary action imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. The Claimant's previous record and warnings, and the gravity of his last infraction, taken as a whole, are sufficient justification for the penalty which has been imposed by the Carrier. The Claimant's record makes it clear that since 1974, he has been disciplined for similar offenses. Said discipline has included a sixty-day suspension in 1977 and a dismissal in 1978, which was later converted to a long suspension. Consequently, the forty-five day suspension imposed in this case is in no way unreasonable, and it is evident that the Carrier has already taken into consideration the lengthy service of the Claimant when imposing the discipline for excessive absenteeism.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

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