

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10613
Docket No. 10625
2-SSR-MA-'85

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company violated the controlling agreement when it unjustly suspended Machinist K. E. Gallagher, Jr., from service for 20 days beginning December 4, 1982 and ending December 23, 1982.
2. That accordingly, the Seaboard System Railroad be ordered to compensate Machinist Gallagher for all pay and benefits lost (made whole) as a result of the above 20 days suspension.

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 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.

The Claimant, K. E. Gallagher, a Machinist in the Carrier's Uceta Shops and in service from March 25, 1984, was given a 20 day actual suspension as a result of an investigation held on November 10, 1982.

The Claimant, in addition to his position with the Carrier, is a Pastor of a Pentecostal Church. The Church has services scheduled on Sunday and Thursday evening. Due to a cutback, the Claimant was placed on the second shift with Sunday and Monday off days. The Claimant was off on September 23, September 30, October 7, October 14, October 21, and October 28. By the Claimant's admission, he was off because of his duties as Pastor of his Church for Thursday evening services.

The Organization argued that this is a religious accommodation case and the Carrier knew the reasons why the Claimant had to be off and yet refused to make any reasonable accommodation for his needs. There was no evidence of any harm to the employer's operations, and there was no showing the position was filled with overtime either. In addition the Organization stated that the hearing was not fair because the Hearing Officer had multiple roles and showed a predisposition against the Claimant.

The Carrier argued that the Claimant was engaged in employment and he was told to report on Thursdays and yet willfully violated the Carrier's reasonable order. The Carrier noted the accommodation requested was due to a commitment to Thursday nights not for religious reasons or any principle, but for the convenience of the parishioners and himself. The Carrier does not provide for four-day work weeks, and the Carrier notes that the Claimant did not ask for accommodation, but just took off and dumped the problem in the Carrier's lap. The Carrier stated that, if the Organization's position would be upheld, employees would then be free to come and go as they please and chaos would result. In any event, this Board is not charged with, nor should it get involved in, matters involving Title 7 of the Civil Rights Act.

On due consideration of the record in this case, the Board finds that the Carrier conducted a fair and impartial hearing. Multiple roles did not deprive the Claimant of due process. The Board finds that this is not a case of religious accommodation, but a case of willful insubordination. If, in fact, a religious accommodation is requested, it is incumbent upon the Claimant to make such request through proper channels, and if he is not satisfied with the decision of the Carrier, he then may pursue the matter through the grievance procedure. This Board has decided many cases involving insubordination, and the Claimant should count himself lucky that the penalty assessed by the Carrier was only a 20 day suspension and not discharge, as is common in cases of this type. The Claimant is admonished to conduct himself properly in the future, and the claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985