

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

Grievance - For removal of thirty (30) days deferred suspension from the record of Machinist Apprentice Larry Preston. Carrier's unjust assessment was based on an investigation held February 17, 1982, in violation of the controlling Agreement effective June 1, 1960, as amended.

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 Larry Preston has been employed by the Carrier at the Houston, Texas, Settegast Yards facility since March 3, 1972. At the time of the incident involved in this case, the Claimant was assigned as a Machinist Apprentice.

On January 29, 1982, the Claimant failed to report for work at his usual 7 A.M. starting time. At approximately 12:10 P.M. on that date, the Claimant advised that he had just been released from jail and would not be in for work.

As a result of the above incident, the Claimant was advised to report for an investigation in connection with absenting himself on January 29, 1982, without permission and a review of his personal absentee record and other records of employment. Following an investigation held on February 17, 1982, the Claimant was assessed a thirty-day deferred suspension.

The Organization's position is that the Claimant had good cause to lay off and that he notified his work place "promptly", within the meaning of Rule 17 of the controlling Agreement, by calling the work place fifty-three minutes after his release from jail, which was the earliest possible time that he could do so. Rule 17 states:

"Employees shall not lay off without first obtaining permission from their foreman to do so, except in cases of sickness or other good cause of which the foreman shall be promptly advised."

The Organization further contends that the Claimant's past record was wrongfully entered into the decision to discipline him.

The Carrier's position is that the Claimant admittedly failed to report for work on January 29, 1982, and therefore absented himself without permission on that date as charged.

The Carrier contends that the Claimant had no justifiable excuse for his unauthorized absence, as being held in jail for nonpayment of traffic tickets was a consequence of his own conduct.

The Carrier submits that the discipline assessed was justified and was in fact mild in view of the Claimant's previous unexcused absences and warnings. The Claimant had been previously warned, on several occasions, that such conduct was not acceptable and would not be excused.

After reviewing the record in this case, this Board finds that the Claimant was properly assessed a thirty-day deferred suspension for absenting himself from work without permission.

Incarceration does not constitute an unavoidable absence from work. (See Second Division Awards 7777 and 8315.) Here, the Claimant's own actions resulted in his confinement. As pointed out in Third Division Award 6572:

"The argument is made that since claimant was in jail and was denied the use of a telephone, no infraction of Rule 60(b), which provides that an employee unable to report for duty will immediately notify his supervisor, is shown because he did not telephone as soon as conditions permitted. But the Rule is stripped of practically all meaning if personal fault is as much of an excuse for inability to report as conditions over which the employee has no control."

This Division has frequently held that incarceration does not constitute an unavoidable absence from work. (See Awards 1508, 4689, and 6606.) Under the circumstances of this case, this Board finds the Claimant's thirty-day deferred suspension to be fully justified. As a matter of fact, the Claimant did call his wife, and he could have called his job.

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Award No. 10643
Docket No. 10721
2-MP-MA-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.