

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

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

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant E. D. Calvert, I. D. No. 92714 was unjustly suspended from service of the Seaboard System Railroad on September 11, 1983 through October 5, 1983, both dates inclusive, after a formal investigation was held in the office of Mr. D. A. Lawson, Conducting Officer on August 30, 1983.

2. That accordingly, Service Attendant E. D. Calvert be compensated an equal amount of days that he failed to receive in the interim period of September 11, 1983 through October 5, 1983, both days inclusive, at the pro-rata rate of pay.

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 E. D. Calvert entered the Carrier's service as a Service Attendant on August 23, 1977, at Nashville, Tennessee, and was so employed at the time of the incident giving rise to this dispute. The Claimant was suspended from service for twenty-five days, from September 11, 1983, until October 5, 1983.

On August 1, 1983, at approximately 10:30 P.M., Foreman Patton called the cab track looking for the Claimant, who was to have been there until 11 P.M. that night. Foreman Patton was informed that the Claimant was not there. Patton called back at 10:45 P.M. and was told that the Claimant was still not there and that his car was not in its usual parking space.

As a result of this incident, the Claimant was charged with leaving his assignment without permission. Following an investigation on August 30, 1983, the Claimant was suspended from service for twenty-five days.

The Organization contends that the evidence shows that the Claimant was on duty and performing his job as instructed by his Supervisor. In support of this contention, the Organization cites Car Foreman V. O. Sneed's testimony at the hearing that he gave the Claimant a shop car report to deliver to the Bowl at 10:25 P.M. The Organization contends that after delivering the report and at the time Patton and Sneed were attempting to locate the Claimant, he was in the bathroom at the Clerk's office, as it was the closest bathroom to him at the time. The Organization cites Sneed's testimony that he looked for the Claimant only in the cab track and the Bowl Office Locker Room.

In response to the Carrier's allegation that the Claimant's car was not in its usual parking spot, the Organization submits that the Claimant drove his girlfriend's car to work that day.

Additionally, it is the Organization's position that even if the Claimant were guilty, the assessed discipline of twenty-five days was totally excessive for the offense.

Thus, the Organization's position is that the Claimant was improperly suspended from service and must be reinstated with his seniority rights and compensated for all lost time and benefits, as provided in Rule 32.

Rule 32 states:

"No employee shall be disciplined without a fair hearing by designated officers of the carrier. Suspension, in proper cases pending a hearing, which will be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his local chairman will be apprised to the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The Carrier's position is that the evidence clearly shows that the Claimant was guilty of leaving his assignment without permission prior to the expiration of his tour of duty. In this regard, the Carrier argues that the Claimant was not at his usual work place when efforts were made to locate him. Furthermore, the Claimant's car was not in the usual parking place, and the Claimant produced no witnesses to prove that he was using his girlfriend's car and had placed it elsewhere.

The Carrier contends that the disciplinary action taken against the Claimant was entirely justified.

After reviewing the record of this matter, this Board finds that there is substantial evidence in the record to prove that the Claimant was guilty of the offense of being away from his assigned work area without permission at approximately 10:30 P.M. on August 1, 1983. This Board also finds that the Claimant was afforded all of his rights with respect to the notice of charges against him and at the formal hearing into those charges. Hence, the Carrier had sufficient reason to discipline the Claimant.

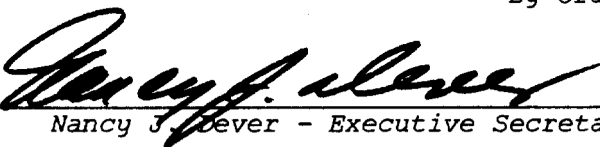
It is fundamental that this Board will normally not second-guess a Carrier in the imposition of discipline unless the disciplinary action taken against a Claimant is unreasonable, arbitrary, or capricious. There is substantial evidence of prior wrongdoing on the part of this Claimant, including three previous letters of reprimand and two previous suspensions for twenty and ten days. Hence, this Board sees no reason to set aside the twenty-five day suspension imposed by the Carrier for this latest incident of wrongdoing on the part of the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Deever - Executive Secretary

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