

The Second Division consisted of the Regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current Agreement Carman R. C. Fritz, Winston, Florida, was improperly suspended from service June 9, 1982 through June 18, 1982 as the result of an unfair hearing.
2. That accordingly, the Carrier be ordered to pay Carman R. C. Fritz for all time lost from June 9, 1982 through June 18, 1982, plus any overtime he may have made between said dates, and that the investigation and the charges, as well as the discipline, be removed from his personal record.

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, R. C. Fritz, was a Carman in the employ of Carrier on April 25, 1982 when his conduct on that date led to an Investigation in which he was charged with:

"The purpose of this investigation is to develop facts and place your responsibility, if any, in connection with report that you were insubordinate to Foreman J. D. Dubois at 7:00 a.m. Daylight Saving time on April 25, 1982 and that you left your assignment without permission from your Foreman at 7:00 a.m. on April 25, 1982.

You are charged with violating that part of Rule 12 of the Rules and Regulations of the Mechanical Department which reads - 'insubordination', and also with violating Rule 26 of the same Rules and Regulations of the Mechanical Department".

These Rules read:

"Rule 12

Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, willful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal.

Rule 26

Employees must not absent themselves from their duties without permission from the proper authority".

Based on the evidence adduced from the Investigation, the Investigating Officer held that the charges had been proved and assessed Claimant a penalty of ten (10) days' suspension.

Claimant had reported for work at 11:00 P.M., the normal reporting time for his shift. He was contractually under obligation to work an eight hour shift which would have normally ended at 7:00 A.M. On the day in question the time changed from Eastern Standard time to Daylight Saving time. On this particular day of the year the shift would have to work until 8:00 A.M. in order to work the requisite number of hours.

At approximately 7:00 A.M. the Foreman noticed that Claimant was absent from his work position. He proceeded to look for him and discovered Claimant in the washroom. The Foreman inquired about Claimant's intentions and was informed that Claimant was leaving because of personal business. He was told that he could not leave. Five minutes later Claimant saw the Foreman and again stated that he was leaving and was again told that he did not have permission. Claimant left.

The facts were relatively undisputed. In response to one question, the Claimant answered:

"Q. Well, in other words, you left without proper authority, is that right?

A. Yes. Sir."

In its Submission to this Board, the Organization makes an argument that the Carrier should have posted a notice on the bulletin board that stated that the work force would have to work until 8:00 A.M. However, there was no showing that Claimant was unaware of his obligation to complete his shift. The Organization also makes the argument that the meritorious reason for having to leave would excuse any misconduct and points to Rule 18(b) of the Agreement which states:

"The arbitrary refusal of a reasonable amount of leave to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be handled as unjust treatment under this agreement".

Assuming arguendo that the reason for leaving was meritorious and that the refusal of the Foreman to grant permission was unreasonable, these facts do not address the issue in at least one of the charges.

Claimant has been charged with insubordination, the direct refusal to obey the order of the Foreman not to leave. It is a long standing rule of contract interpretation that refusal of a direct order can only be done without consequence when the employee so ordered has a reasonable belief that obedience would jeopardize his personal safety. Certainly no such evidence was attempted to be offered at the Investigation. Therefore, we hold that the charge of insubordination was proved.

Insubordination is often a cause for discharge. It is one of the so called "capital" offenses in labor matters. Given the gravity of the offense per se, this Board finds that a ten day suspension was not excessive discipline under the circumstances. We will affirm the discipline.

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 9th day of July 1986.