

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk & Western Railway Company violated the controlling Agreement of September 1, 1949, as subsequently amended when on November 2, 1983, Car Repairer T. Robinson was given a formal investigation resulting in a ten (10) days actual calendar day suspension while on probation, T. Robinson was required to serve an additional five (5) days suspension. The fifteen (15) days actual suspension to begin Wednesday Nov. 23, 1983 and ending Thursday Dec. 8, 1983 at 7:00 AM.

2. That the investigation was improperly arrived at, and represents unjust treatment within the meaning and intent of Rule No. 37 of the controlling Agreement.

3. That because of such violation and unjust action, the Norfolk and Western Railway Company be ordered to rescind the assessed discipline, and that T. Robinson be compensated for all time lost.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 is a Carman employed by the Norfolk and Western Railway Company at Carrier's repair facility, Weller Yard, Grundy, Virginia where trains and cars are inspected, serviced and repaired.

Claimant was hospitalized on October 5, 1983, which as described by his doctor was chest pain and severe weakness, the resultant test showed severe Bronchitis, and Hyperlipidemia. His doctor gave Claimant a signed statement (actually three statements) in which he was advised that he could return to work on October 17, but also that he should be re-evaluated on October 13, with a possibility of returning to work on the 14th, if symptoms improved adequately. His condition apparently did improve to the point where he could and did return to work on the 14th of October. All of the doctors reports relative to Claimant's physical condition were furnished Carrier.

On October 18, 1983, Carrier sent Claimant notice to appear for Investigation alleged:

"To determine your responsibility in connection with your giving a false reason to be absent from your assigned position of Car Repairer, Third Shift, Weller Yard, on Monday night, October 10, 1983, and your being on Company Property (Weller Yard Clubhouse) without authority on October 10, 1983, contrary to instructions contained in Trainmaster Lindy Prices Notice posted in the Clubhouse."

The Investigation was once postponed and then held on November 2, 1983, and on November 22, 1983 Carrier advised Claimant that he had been assessed a ten day suspension which activated a five day deferred suspension previously assessed.

The Employes contend that:

- "1. Doctors statements were submitted for Claimant to be off, from work for the date in question.
2. The charge of being on Company Property without permission was not proven. It was however proven that anyone could be in the Weller Yard Clubhouse which is where Claimant was.
3. It was also proven the Company witness W. E. Jones said he had an ax to grind against the Claimant and that is why he went and questioned him being in the Clubhouse to his supervisor. At this point Local Chairman Lamanca asked that the case be dropped and he was overruled.
4. In the Company's letter of May 18, 1984, they don't deny the compensation requested on behalf of the Claimant, in its original appeal dated December 16, 1983. Such procedural defect is fatal, and Claimant must be compensated for all time he lost and all overtime he would have worked, also, holiday pay he would have received had he not been suspended."

The Carrier contends that:

- "1. The claim presented on the property has been abandoned and a new claim has been submitted to this Board and
2. The instant claim, in its present form, was not discussed on the property nor was the claim, as presented to this Board, even similar to the claim handled on the property."

Both parties cite Awards in defense of their positions.

In considering all of the Claims and contentions made by the parties as well as the Awards cited by the parties, we do not find the procedural objections raised by either party to have much merit, the Investigation was not unfairly conducted and the Claim did not deviate in any substantial way from that originally submitted. We will rule strictly on the merits of the case.

With reference to Carrier's contention that Claimant gave a false reason to be absent from his assigned position. He was under doctor's orders as to when he could return to work and he actually returned to work three days earlier than originally expected. Further Carrier was furnished copies of these doctor evaluations and recommendations, and finally this Board does not have the authority, and should not have the authority to overrule a doctor as to an Employee's physical condition.

As to being on Company Property (Weller Yard Clubhouse) without authority, contrary to instructions ... if these instructions were ever issued they certainly seem not to have been enforced. Carrier officials themselves testified that not only Railroad Employees but the general public consistently went into the Clubhouse at what ever time they wished and as many times as wished. We also note the following Transcript testimony in regards to those "instructions" Page 17 of Carrier's Submission:

"Due to past troubles with non-railroad persons entering the dormitory section, as previously stated herein, Trainmaster Lendy Price posted a notice separating the diner over from the dormitory lobby..."

Thus it is clear that there never had been any orders for Employees or apparently anyone else to stay out of the Clubhouse, but only out of the dormitory lobby, and that was brought on by non-railroad people, clearly Claimant was not violating instructions when he visited with friends in the Weller Yard Clubhouse.

Carrier also states:

"This Board does not have any information on which to

determine the merits giving rise to the initial 5-day suspension..."

We agree.

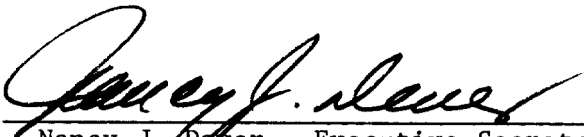
Considering all the facts and all of the testimony as well as the contentions on the part of both parties and the Awards cited we will rule that the Carrier erred in assessing the ten day suspension and that part of the Claim must be sustained, but with literally no information in regards to the 5-day suspension we will dismiss that part of the Claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 1st day of October 1986.