

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current applicable Agreement, Laborer Ms. JoAnn Caron, was unjustly dismissed from the service of the Carrier on October 23, 1984.

2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, Ms. JoAnn Caron, at the pro rata rate of pay for each work day beginning October 23, 1985, until she is reinstated to service and in addition, receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, Ms. JoAnn Caron, for herself and that she be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance; and in addition to the money claimed herein, the Carrier shall pay Ms. Caron an additional sum of 18% per annum, compounded annually, on the anniversary date of said claim.

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 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 were given due notice of hearing thereon.

The Claimant in this case is a Laborer employed by the Carrier at Carrier's Diesel repair facility at Avondale, LA.

On date of September 27, 1984, the Carrier sent the following Notice to the Claimant:

"Arrange to report to Trainmaster's office, 5245 River Road, Avondale, La. 9:00 A.M. October 2, 1984, for formal investigation to develop facts and place responsibility, if any, for your alleged absenting yourself without proper authority at approximately 10:30 A.M. September 27, 1984 while you were working as Laborer Avondale Diesel Shop.

Arrange attendance of witnesses and/or representatives as provided for by your scheduled Agreement.

You are being withheld from service pending formal investigation."

At the request of the Organization the Investigation was postponed and held on October 19, 1984.

On October 23, 1984 the Carrier sent the following Notice to the Claimant.

"You are hereby advised that your record has this date been assessed with dismissal for your violation of General Rule B of the Uniform Code of Safety Rules and paragraph #5 of Conditions of Employment in connection with your absenting yourself without proper authority at approximately 10:30 A.M., September 27, 1984 while working as Diesel Shop Laborer as was developed through investigation held October 18, 1984 Avondale, La."

The Transcript of the Investigation Page 10 shows the following:

* * * *

"Hearing Officer questions the Claimant:

Q. In your conversation with Mr. Smith on the morning of Sept. 27, 1984 did he instruct you in the proper manner in which to lay off during a shift.

A. Yes.

Q. For the record what were his instructions as to the proper manner to lay off during a shift.

A. He said I should lay off to J. C. my Gen. Foreman and I replied J. C. is never there. He said in that case I should lay off to someone at the Rip Track.

Q. On Sept. 27, 1984 you stated that you went to your car and left. Approx. what time was this.

A. It was about 10:15 A.M.

Q. Prior to your departure did you contact Mr. Calzada to indicate you were leaving.

A. No Sir.

Q. Did you contact Mr. Smith or Mr. Galbraith to indicate you were leaving.

A. No sir.

Q. For the record prior to your departure on the morning of Sept. 27, 1984 did you contact and receive authority to leave from any officer of the Missouri Pacific R. R.

A. No sir."

All this testimony by the Claimant shows that on September 27, 1984, the Claimant did leave the property without proper authority. The fact that she frankly and openly admitted it is also a strong indication that all of her testimony is also truthful and there is more. On Page 9 the Hearing Officer questions the Claimant:

"Q. Were you on duty as Laborer on the morning of Sept. 27, 1984.

A. Yes

Q. Please state for the record all facts of which you have knowledge concerning the caption of this investigation.

A. During the morning J. C. told me to do Bum sets, which I did. Then we talked about the overtime being allotted unfairly and Felton advised me that MR. Smith wanted to speak with me. So I called Mr. Smith to ask him if he had ever straightened out why overtime was not being allotted on a fair basis. He then told me that he was coming down to the Diesel Shop to speak with me. After J. C. returned from going to get coffee with Warren Lanassa, after his usual morning coffee break, he lined me up I guess it must have been around 8:45 am I SAY 9 A.M. TO wash an engine I then told him that I had been asking for the proper equipment to wash the engine for 6 weeks. So he said the boots

and gloves that I needed were on order to due the best I could without them. Which meant that I would have to wash the engines in an unsafe manner because it gets so slippery from the soap that the boots being rubber do stay in one spot. About this time Mr. Smith came, and he took me off the engine I was not on the engine, but I was by the engine with Juan. He started to talk to me about my absenteeism and failure to report to a foreman on Sept. 4, 1984 that I failed to report to a foreman I told him that 2 weeks prior to us having this talk I had seen him in the parking lot and said that I would bring a doctor's certificate for being off sick. He told me then, not on Sept. 27 but when I had seen him in the parking lot that there was no need for it unless the Trainmaster's wanted it. So on Sept. 27, 1984 while we were having this conversation I reminded him of this I also asked him if it made any difference of my fear of J. C. losing his temper and hitting me. His reply was I lose my temper and scream in the faces of my sons, but I would never hit them. I replied I was not talking about his temper but J. C.'s. I ALSO told him that it is utterly impossible to keep track of J. C. where he is. I also told him on Sept. 4, 1984 that I layed off to J. C. and he failed to tell anyone. That also on Sept. 4, 1984 I talked to Pat Montalbano and I went straight to the doctor and was intraveinously feed medicine. Mr. Smith seemed to get very upset even though he kept asking Felton Glapion and I what we had to say about the condition at the Diesel Shop. At one point I remember him shaking his finger in my face. Every time Felton and I brought up the sexual harassment the physical harassment and the emotional harassment that both foremen had done to me during my years of service his reply was I had nothing to do with that. So I felt that I was very upset Before Mr. Smith left, I think he was in the office, I want to take my name off the overtime board since it was a farce. Then I went into the ladies room and tried to get myself together because I was then crying and to the point of hysteria. I then went to my car and left. I saw no point in talking to J. C. or Mr. Smith because I did not trust either one of them. There has been times that I have laid off to Clay Gray and he had forgotten to tell anyone. I have layed off to J. C. I have left a copy of a doctors excuse and no one got it, or told anyone that I laid off and Mr. Smith did not want to be bothered with these transgressions."

Noteworthy in regards to this testimony is the fact that the Hearing Officer asks not a single question relative to these contentions of physical, emotional and sexual harassment, nor does he call in any witnesses to refute this testimony if it was not true.

Further on Page 10 Claimant's Representative questions her:

"Q. Through your previous experience with the General Foreman and Master Mechanic Smith was this the reason you did not report off the job on Sept. 27, 1984.

A. Yes sir.

Q. Are you taking any medicine because of the harassment that you have suffered under the 2 foremens that you work for.

A. Yes sir."

Continuing on Page 11.

"Q. During your conversation with Master Mechanic Smith did you inform him of the harassment you were receiving from the Foreman that you work for.

A. Yes sir, I did.

Q. What was his reply to you.

A. He said that he could not do anything about that.

Q. Did he instruct you on Sept. 27, 1984 who to see about this condition.

A. No Sir, he did not."

Farther down on Page 11 the Hearing Officer questions the Claimant.

* * * *

"Q. You stated that you are taking medicine, is this medicine a narcotic in nature.

A. No sir.

Q. Does use of this medicine result in drowsiness or effect alertness.

A. No sir."

Again it is noteworthy that the Hearing Officer asks not a single question relative to the Claimant's contention of physical, emotional and sexual harassment or her fear of being hit by one of these Foremen, and this follows through the entire case. Claimant's contentions had previously been reported to the Master Mechanic whose answer was, or at least never denied by Carrier, "I had nothing to do with that," or "I can't do anything about that." This certainly came out at the Investigation, with no denial, no rebuttal, never refuted. It was part of the Claim on the property which file went to three Carrier Officials including the Director of Labor Relations. Never once was there a denial that this actually happened. It was vividly portrayed by the Claimant at an Oral Hearing before the Board in Chicago, Illinois on June 11, 1986, a Hearing which this neutral attended, again from the Carrier no denial.

This Board does not resolve questions of credibility as to the testimony among witnesses, but in cases such as this where there is no denial whatsoever on the part of the other party, then there is nothing to resolve. Accordingly, the Claimant's testimony as to physical, emotional and sexual harassment and fear of being hit by one of these Foreman, must be accepted as a fact.

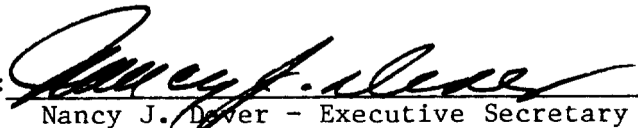
There is no question that the Claimant left the property without proper authority and that we can never condone. Accordingly and in view of the very unusual circumstances in this case we will reduce the penalty to a thirty day calendar suspension and otherwise sustain the Claim to the extent provided for by Schedule Rules or Law. We cannot sustain it for the interest as the Agreement does not provide for interest. If the Agreement says less deductions for outside earnings, the outside earnings must be deducted, if the Agreement does not so say then outside earnings should not be deducted.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

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

