

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

(International Association of Machinists and Aerospace  
(Workers  
Parties to Dispute: (  
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employes:

Claim in behalf of Machinist C. E. Watson for reinstatement with pay for all lost time on his regular assignment plus any overtime for which he would have been available had he not been unjustly removed from the service of the Carrier in violation of the controlling Agreement, as amended, in particular, but not limited to, Rule 17 and Rule 26; seniority and accumulated vacation rights unimpaired, in addition to all negotiated benefits. This is due to the Carrier having removed him from service on alleged Company Rule violations after investigation held June 29, 1984.

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 were given due notice of hearing thereon.

Claimant, a Machinist, who was employed at the Carrier's Ray Engine House was dismissed after an Investigation was conducted on June 29, 1984. The Investigation was conducted to determine the Claimant's ". . . responsibility, if any, it being alleged you failed to protect your assignment June 9, 1984, beginning 12:00 Midnight, and ending 8:00 A.M., June 10, 1984, without authority . . ."

The Organization contends that Claimant was subsequently charged with insubordination because Claimant failed to follow the instructions of his Foreman. The charge of insubordination was not included in the original Notice of Investigation dated June 11, 1984. It was however, included in the Carrier's second Notice of the Investigation dated June 19, 1984. It appears, from the record and the Exhibits, that the Investigation which was conducted on June 29, 1984, was the Investigation which had been originally scheduled for June 20, 1984, by the Carrier's letter of June 11, 1984, and which was postponed until June 29, 1984 by mutual agreement of the Carrier and the Organization. Accordingly, the Carrier's Notice dated June 11, 1984, set the parameter of the Investigation which was continued to June 29, 1984.

The Carrier also contends that Claimant's appeal of this matter is not timely. Claimant was dismissed following the Investigation on June 29, 1984. Said Notice of dismissal was conveyed to the Claimant in the Carrier's letter to Claimant dated July 9, 1984. The dismissal was appealed to the Superintendent of Cars and Locomotives by the Organization's letter of July 19, 1984. That appeal was denied by letter dated July 30, 1984. The record does not reflect any exception taken by the Carrier to the method followed by the Organization in perfecting its appeal. Further, no evidence was submitted that appeals in "discipline" matters were to be handled in a different fashion than was being followed by the Organization. While there may be some ambiguity in this case as to who was the succeeding Appeals Officer, there is no evidence before us to substantiate an improper appeal. We will therefore decide the matter on its merits.

The record before us clearly states the facts. On June 4, 1984, at the end of his tour of duty, Claimant requested to be off from work on June 9, 1984. Because of existing vacancies and other constraints, Claimant was advised that he could not have permission to be absent from his work on June 9, 1984; there was no further discussion on the matter between the Claimant and his Foreman, Mr. T. J. McGee.

On June 9, 1984, Claimant neither reported for his work assignment nor did he call in to report that he would be absent from his work assignment. The vacancy thus was filled by doubling over other Machinists.

A fair reading of the record shows that there can be no doubt that Claimant knew and understood that he did not have permission to be absent from his work assignment, yet he took it upon himself to be absent for his own purposes.

This Board does not condone Claimant's action. The record clearly shows that the Carrier has on several occasions gone to extraordinary lengths to accommodate the Claimant's needs, and in return, the Carrier could expect the same consideration from the Claimant concerning the Carrier's need to have all work assignments covered. Claimant was given clear and specific operating reasons by his Foreman for the denial of his request, yet Claimant never advised the Carrier of the reason for his need to be absent on June 9, 1984, until the disciplinary Hearing.

In view of all the facts of record in this case we find that the Claimant was indeed guilty of being absent without permission on June 9, 1984, but that the discipline of dismissal for this infraction was excessive. Accordingly, this Board finds that the Claimant shall be restored to service with seniority unimpaired, but without any compensation for the time out of service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December 1986.