

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States and
(Canada
Parties to Dispute: (
(Kansas City Southern Railway Company
(Louisiana & Arkansas Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Southern Railway Company-Louisiana & Arkansas Railway Company violated the Railway Labor Act when Carman S. McDonald was suspended commencing September 14, 1984.

2. That the Kansas City Southern Railway Company-Louisiana and Arkansas Railway Company be required to make S. McDonald whole by removing all reference to this suspension from his personal record and pay him eight (8) hours pay at the proper pro rata rate for the dates of September 14, 17, 18, 19, 20 and 21, 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 waived right of appearance at hearing thereon.

The Claimant herein had been in the service of the Carrier from October 1, 1969. At the time of the occurrence giving rise to the dispute herein, he was regularly assigned as a Carman. On August 3, 1984, he was notified by the Carrier's Assistant Superintendent Car Department to appear for an Investigation for allegedly not protecting his assignment.

The Investigation was conducted as scheduled, with Special Representative of Car Department as Conducting Officer. A copy of the Transcript of the Investigation has been made a part of the record. On September 13, 1984, Claimant was assessed discipline of ten days suspension, beginning September 14, 1984.

We have carefully reviewed the Transcript of the Investigation and find that it was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated. The Organization, in appeal on the property, contended that the Letter of Charge was "vague and imprecise." This contention is continued before the Board. We cannot agree with such contention. The charge was sufficiently precise to enable the Claimant and his Representatives to prepare a defense. It cited specific dates of Claimant's alleged absences which were to be investigated. The Organization also raises the rather novel argument that the injection of Agreement Rule 15 into the Investigation without having been cited in the Letter of Charge came too late for a defense to be prepared. Employees and Representatives are charged with knowledge of Agreement Rules. The record shows that Agreement Rule 15 was read into the record of the Investigation by Claimant's Representative, and the Organization relies upon Rule 15 in its Submission. We do not consider the incident involving June 20, 1984, to be properly before the Board, as that date was not included in the Letter of Charge.

Rule 15 of the applicable Agreement reads:

"RULE 15
Absence from Work Without Leave

"In case an employee is unavoidably kept from work, he will not be disciplined. An employee detained from work on account of sickness, or any other good cause, shall notify his foreman as early as possible."

It is well settled that in discipline cases, the burden of proving the charge by substantial evidence is upon the Carrier. This aspect of the case gives us concern. In the Investigation the Car Foreman and the Relief Car Foreman testified that Claimant did not report for work on the dates involved in the Letter of Charge, nor did Claimant notify them that he would be absent on such dates. However, each testified that he showed Claimant on the absentee record as "Sick." The issue was not pursued further with the Car Foreman or the Relief Car Foreman.

The Assistant Superintendent Car Department testified that on June 21, 1984, another employe told him that he thought Claimant would be off that day, that Claimant's son had given the other employe a note to be delivered to the Assistant Superintendent Car Department, but the other employe had forgotten it. He stated that the note was given to him on June 22, 1984, and read:

"J. E. Foster,

I, Sam McDonald is sick but I won't be able to get a doctor's excuse until after payday so I guess I won't be back until then unless you change. (sic)

Sam McDonald."

The Assistant Superintendent Car Department also read into the record a Memorandum that he had prepared on July 16, 1984, with reference to a telephone conversation that he had with Claimant on that date. The Memorandum indicated that Claimant had just left the doctor's office, that he was going back to the hospital, and would be off several more days. He went on to testify that Claimant's brother called him on July 23, 1984, and stated that Claimant was going into the hospital.

Claimant reported for work on July 31, 1984, with a Medical Report from his doctor. The Medical Report was dated July 18, 1984, and showed date of first treatment as June 28, 1984, date of discharge not determined, date of return visit July 27, 1984, and estimated length of disability July 30, 1984.

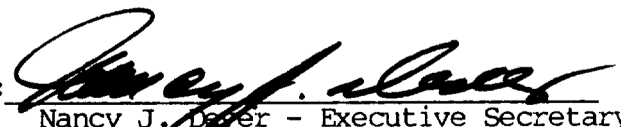
Based upon our complete review of the record properly before the Board, we find that Carrier has not produced substantial evidence to warrant the discipline against Claimant. We may not properly consider the instances cited by the Carrier after the instant case, as in discipline cases the parties to the dispute and the Board are each and all restricted to the evidence introduced at the Investigation or Hearing and the record may not properly be added to after the Hearing or Investigation closes.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.