

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (
(Texas Mexican Railway Company

STATEMENT OF CLAIM:

1. That the Texas Mexican Railway Company violated the controlling agreement, particularly Rule 14, when they arbitrarily suspended Carman Jose C. Reyes from service for a period a thirty (30) days (March 5 through April 3, 1985) following investigation held on February 20, 1985, Laredo, Texas.

2. That accordingly, the Texas Mexican Railway Company be ordered to compensate Carman Reyes as follows:

(a) Compensate him for all time withheld from service covering period March 5 through April 3, 1985, and pay interest in the amount of 12% annually;

(b) Compensate him for all overtime he would have earned had he not been unfairly withheld from service;

(c) Compensate him for all vacation rights, and all other benefits accruing to an employe in active service;

(d) Reimburse him for all losses sutained (sic) account loss of coverage under health and life insurance agreements during the period held out of service.

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 employees 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.

At the relevant time, Claimant was a Carman with a seniority date of February 19, 1974. As a result of charges dated February 8, 1985, Hearing held on February 20, 1985, and letter dated February 28, 1985, Claimant was suspended for 30 days for violation of Rule 801.

The record reveals that on January 17, 1985, while heating a bracket on a freight car, Claimant received a burn injury to his eye. After receiving medical treatment, Claimant was released to return to work on January 18, 1985. On January 18, 1985, Claimant called the Carrier and stated that he would not be in since his eye was still bothering him. On January 18, 1985, two Carrier Officers observed Claimant operating a motor grader near his home. Claimant also requested compensation for January 18, 1985, due to the on the job injury and was paid for that date. The instant charges followed.

The Organization first argues that the charges were not specific within the meaning of Rule 14(a). In pertinent part, the charges state:

". . . You may have violated Rules 801 and 810 of the General Rules and Regulations on the Texas Mexican Railway Company of January 18, 1985. On that date you failed to report for duty and your regular assignment despite the fact that your Doctor's certificate stated that you could return to work on January 18, 1985. You filed a claim for compensation on that date for which you were paid."

Rule 14(a) requires that the employee "will be apprised of the precise charge against him." In our opinion, the charges are sufficiently precise within the meaning of Rule 14(a) so as to place Claimant on notice of the allegations against him and to permit Claimant to prepare his defense to those allegations.

We have further examined the Organization's next argument concerning other alleged procedural irregularities in the presentation of evidence. Based upon our reading of the record as a whole, we find no prejudicial error has been committed.

With respect to the merits, we find substantial evidence in the record to support the Carrier's conclusion that Claimant violated Rule 801 as alleged. Claimant called in stating that he could not work as a result of an on the job injury and requested compensation for that date and yet, on the day Claimant asserted that he could not work due the injury, he was operating a grader near his home. Rule 801 prohibits dishonest conduct and indifference to duty. Substantial evidence establishes that Claimant's conduct fell within the prohibitions of that Rule. We are unable to find that the reasons given by Claimant for operating the grader, the fact that Claimant owned the grader or the fact that Claimant's version of the events differed from the versions offered by the Carrier's witnesses as grounds for changing the result in this case. Our function is limited to determining whether substantial evidence exists in the record to support the Carrier's action and we find the evidence in this record sufficient to meet that standard.

However, we are of the opinion that a 30 day suspension is excessive. The record reveals that this incident constituted the first disciplinary action taken against Claimant during his 11 years of service with the Carrier. Accordingly, we shall reduce the suspension to 15 days. Claimant shall be compensated accordingly.

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 3rd day of February 1988.