

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That under the controlling agreement, Laborer R. T. Scott was unjustly suspended from service of the CSX Transportation, Inc. on September 8, 1986, after a formal investigation was held on July 24, 1986, by Mr. H. D. Bledsoe, Asst. Master Mechanic and Conducting Officer.

2. That accordingly, Laborer R. T. Scott be compensated for the days of September 8, 1986 through October 10, 1986, (25 work days) both dates inclusive, and the payment of 10% interest be added thereto.

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 waived right of appearance at hearing thereon.

The Claimant was employed at the Carrier's Diesel Locomotive Repair facility in Hialeah, Florida. On June 23, 1986, he left the facility in his automobile at 11:30 A.M. for a thirty (30) minute lunch period (11:30 A.M. to 12 Noon). At the time he was to have returned from lunch, his wife and his niece were detained by the police. Claimant first contacted the Carrier's office at 12:50 P.M. to report his detention in connection with the car's registration. At 1:30 P.M., Claimant again called the Carrier's office and this time repeated the situation to his foreman who withheld permission to be absent, pending substantiation of the reasons for the absence.

Later during the afternoon of June 23, 1986, at about 4:30 P.M., Claimant met his foreman at the entrance to the facility. Claimant stated that he would report for work the next day. However, at about 6:30 P.M. on June 23, 1986, Claimant called the Carrier's office to report that he had to be in court at 8:30 A.M. on June 24, 1986, and therefore would not work his assignment.

When Claimant reported for his regular assignment on June 25, 1986, the foreman asked Claimant to explain his absence on June 23 and 24, 1986. Claimant contends that he again indicated that the police wanted to verify ownership of the car, but that he would not discuss personal matters involving other persons in the car. The foreman contends that in reply to his request for more information, Claimant said that the reasons for his absence were personal.

Claimant was subsequently charged with violating Rule 3 (making false statements or concealing facts) and Rules 5 and 7 (absent without proper permission). Following an Investigative Hearing, Claimant was assessed a twenty-five (25) working days disciplinary suspension.

The Carrier has not presented substantial evidence in support of its charge that Claimant violated Rule 3. In his reports to the Carrier on June 23, 1986, at 12:50 and 1:30 P.M., Claimant stated that his encounter with the police involved ownership and registration of the car. The Carrier has presented no evidence that his participation in the incident on June 23rd involved more than the registration of the car. The Carrier has not established that Claimant made false statements or concealed facts relevant to his encounter with the police.

Concerning Claimant's absence from work during the afternoon of June 23, 1986, the Carrier has not presented substantial evidence in support of its charge that Claimant violated Rules 5 and 7. In fact, Claimant called the Carrier's office twice to explain his absence from work, and also left a telephone number where he could be reached at the police station. We must conclude from the foreman's testimony that if he had been presented "...some kind of proof that he (Claimant) had been at the police station..." an excused absence for June 23rd would have been granted. Nevertheless, no attempt was made to call Claimant at the police station. Given that Claimant was not ticketed or arrested, it is not clear what proof Claimant was expected to provide.

Claimant contends that he was required to be in court at 8:30 A.M. on June 24, 1986, but that there was a "mixup in the record" and the date for his appearance was rescheduled. Claimant has presented no documentation or other evidence that he was required to be in court on June 24th. The Carrier has good cause to withhold permission for an excused absence on June 24th. Therefore, Claimant violated Rule 54 and 7 on June 24, 1986.


Discipline of ten (10) working days in this matter is appropriate for the unexcused absence on June 24, 1986, as Claimant's employment record includes letters of caution and a five (5) day disciplinary suspension for absenteeism, tardiness and early quits. Claimant is to be compensated as provided in the Agreement for all wages lost in excess of these ten (10) working days assessed because of this incident.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1989.