

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ A Division of TCU
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(Southern Railway Company

STATEMENT OF CLAIM:

1. Claim on behalf of Carman W. E. Byrd, Spartanburg, South Carolina, that the Carrier violated Rule 30 of the controlling Agreement when they required him to present a doctor's statement each time he was absent due to sickness.

2. That accordingly, the Carrier be ordered to rescind the instructions contained in bulletin dated February 1, 1988 and signed by J. B. Shrewsbury, Manager Hayne Shop.

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.

In this dispute, the Organization contends that Carrier unilaterally changed Rule 30 of the Controlling Agreement, when it issued an "all employees bulletin" on February 1, 1988 requiring employees to notify the Company between 7:10 A.M. and 7:30 A.M. if any employee was unable to protect his assignment because of sickness or other good cause. In addition, the Organization asserts that Carrier's February 1, 1988 letter to Foremen directing said officials to require specifically identified Carmen to submit medical substantiation of absences was also a unilateral modification of Rule 30. In essence, the Organization maintains that by requiring specific employees to provide a doctor's slip for each absence, while several hundred other employees are exempt from this requirement, Carrier improperly imposed a new condition of employment. It cited several Second Division Awards as supportive authority for its position. See Second Division Award Nos. 9711, 7632, 8251, 7020, 7632, 8251, 9949, 11155 and 11602.

Conversely, Carrier concedes that while Rule 30 provides for excused absences due to sickness, illness or other legitimate reasons, such absences are indeed not limitless. It asserts that it has the right to require an employee who is excessively absent to provide medical verification for his absences. Moreover, it points out that Rule 30 does not preclude its officials from requiring an employee to provide medical evidence for an absence assertedly due to illness, and premises this interpretative position on Rule 30's language that excessive absenteeism and/or tardiness will not be tolerated. It also argues that the Board lacks jurisdiction to hear this case, since the Board is faced with a premature dispute in the nature of a request for a declaratory judgment. It referenced a Public Law Board award issued on its property involving the same Organization as on point and dispositive. See Public Law Board No. 3858, Award No. 11 issued October 18, 1985.

In considering this case, the Board concurs with Carrier's basic position. Essentially, the All Employees bulletin posted on February 8, 1988 does not impose a unilateral change of Rule 30, since it merely requires that an employee unable to protect his assignment because of sickness or other good cause must notify the Company, if possible, between 7:10 A.M. and 7:30 A.M. This is not an unreasonable time regulatory requirement, since Carrier has an opportunity to deploy forces differently, or call extra board or furlough employees. In the absence of this notice, employees are by definition and implicitly required to notify Carrier officials of any prospective absences and usually before the start of the work day. In fact, Rule 30 (a) requires notification as early as possible. While the February 1, 1988 All Employees bulletin sets forth a time period, it also contains the words, "if possible", and recognizes exceptions such as accidents or breakdowns en route to work. It is not inconsistent with the intent of Rule 30 (a).

Similarly, Rule 30 (b) addresses excessive absenteeism and tardiness and posits a warning that except due to sickness, excessive absenteeism or tardiness will not be tolerated. It reads:

"The provisions of paragraph (a) shall be strictly complied with. Excessive absenteeism (except due to sickness under paragraph (a) above) and/or tardiness will not be tolerated and employees so charged shall be subject to the disciplinary procedures of Rule 34."

Consequently, an employee who is excessively absent or tardy is subject to disciplinary charges, unless he could establish he was sick. As an operational necessity, it would make little sense for an employee charged with excessive absenteeism or tardiness to offer medical proof for the first time at an investigation, since legitimate absences are permissible. Thus, Carrier has the right to request medical proof if an employee is deemed excessively absent or tardy. Public Law Board No. 3858, Award No. 11 involving the same Carrier and Organization recognized this prerogative. There is merit to the Organization's observation that not every illness or sickness requires medical attention ("proof"), but the primary issue is whether Carrier can require such

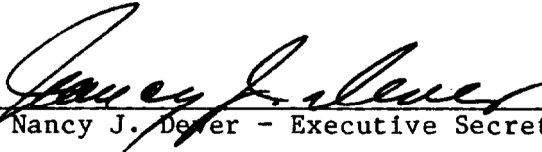
proof if an employee is deemed excessively absent. Award No. 11 of Public Law Board No. 3858, is the closest Award on point and it affirms Carrier 's position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1990.