

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ A Division of TCU  
(  
(Northeast Illinois Regional Commuter Railroad  
( Corporation

STATEMENT OF CLAIM:

1. That the Northeast Illinois Railroad Corporation be ordered to compensate Coach Cleaner Carl E. Huff for the ten (10) days suspension Coach Cleaner Carl Huff was unjustly assessed.

2. That the Northeast Illinois Railroad Corporation be ordered to compensate Coach Cleaner Carl Huff for all benefits which he may have lost and which are a condition of employment, such as health, welfare, insurance, vacation, paid holidays, full seniority; and we also request interest at the 10% rate per annum for any compensation he may receive.

3. That the Northeast Illinois Railroad Corporation shall be ordered to cease their violation of the Agreement effective October 1, 1986, with their use of Division Manager's Notice No 21 in place of proper Agreement Rule 14.

4. That the Carrier's use of their unilateral Division Manager's Notice No 21 renders the hearing procedurally defective and that the claim must be paid as presented.

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.

Claimant was regularly assigned as a Coach Cleaner, Monday through Friday, with hours of 8:00 A.M. to 4:00 P.M. On September 27, 1988, the Claimant did not report at 8:00 A.M. At about 3:32 P.M. he called in and stated he had fallen asleep after taking some medication at 7:00 A.M. and had not awakened until the afternoon. On September 29, 1988 the Claimant reported for work at 9:40 A.M.; allegedly due to attending a funeral.

As the result of a formal Hearing on October 5, 1988 the Claimant was assessed a five-day actual suspension which activated a previously assessed five-day deferred suspension or a total of 10 actual days suspension.

We have reviewed the transcript of the Hearing and find that it was conducted in a fair and impartial manner.

The Employees do not dispute that the Claimant was absent on September 27 and tardy on September 29. They argue that the Claimant complied with Rule 14 in that he notified "the Carrier as early as possible." Rule 14 reads, as follows:

"In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or any other good cause shall notify the Carrier as early as possible."

The Employees argument in this case is not well founded. The Claimant indicated at the Hearing that he took pain pills on September 27 at 7:00 A.M. that made him drowsy and made him go to sleep. The pain pills were a prescription. If they were the type that would make an individual drowsy and sleepy (in the Claimant's case allegedly causing him to sleep for eight hours) there would have been a warning on the label to that effect. The Claimant should have been forewarned at 7:00 A.M. that if he took the pills that it was highly unlikely that he would be able to drive or to be at work at 8:00 A.M. The Claimant stated at the Hearing that he knew on September 28 that he was going to a funeral on September 29, however, he gave no good reason at the Hearing for not calling and advising Carrier that he would not be at work at 8:00 A.M. on September 29.

The Employees also argue that it was improper for the Carrier to use Division Manager's Notice No. 21 dated January 12, 1988, and Rule Q. See Second Division Award 11919, where we upheld Carrier's use of Notice No. 21 in a similar case involving the same individual. Rule Q, an Employee Conduct Rule, contains the following language: "Employees must report at the appointed time." Rule 14 reads in part, as follows:

"An employee detained from work on account of sickness or for any other good cause shall notify the Carrier as early as possible."

We find no conflict between Rule 14 and Rule Q. We believe that even where there is no written Rule it is still implied in any employment relationship that, unless advised otherwise, an employee is expected to report on time. When, for good cause, he cannot report on time he should notify the Carrier as early as possible. See Award 3 of PLB No. 4882.

It is our conclusion that the Claimant's failure to call in as required by Notice No. 21 was brought on by his own actions; he should have known when he took the pain pills that the likelihood of his being to work on time on September 27 was practically nil. While the Claimant knew a day ahead he was going to a funeral on September 29 he did not call but reported to work


at 9:40 A.M. one hour and forty minutes late. We find that the Carrier has met the necessary burden of proof in this case and that the Claimant was guilty as charged. In addition we find that he did not comply with Rule 14. The Claimant's service record shows that Carrier had previously held conferences with him and had written him letters regarding his absenteeism. The five-day deferred suspension, which was activated by the discipline assessed in this case, pertained to absenteeism by the Claimant in August 1988. Accordingly we find no reason to disturb the discipline assessed in this case.

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 1st day of August 1990.