

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

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

STATEMENT OF CLAIM:

1. That the Southern Railway Company violated the terms and conditions of the controlling agreement, specifically Rules 30 and 34, on June 1, 1989 when they issued Carman J. E. Barnard a letter of reprimand. This discipline was issued due to the charge of 'Failure to follow bulletin instructions concerning your reporting off from your assignment on May 24, 1989.

2. That accordingly, the Southern Railway Company now be ordered to provide the following relief: (A) That the unauthorized and unnecessary letter of reprimand be removed from Carman Barnard's personal record file; (B) That all mention of both the preliminary and formal investigation also be removed from Carman Barnard's personal file; (C) That the tape recording of the formal investigation be destroyed in the presence of Carman Barnard and a Representative of the Brotherhood of Railway Carmen; (D) Finally, that the Southern Railway Company be ordered to write Carman Barnard a letter stating that he completely complied with the terms of Rule 30 on May 24, 1989, with copy to his personal record file.

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.

Subsequent to an investigation and a hearing, the Claimant was issued a reprimand for alleged failure to comply with instructions to protect his assignment.

The Carrier established that the Employee was due to report to duty at 7:00 A.M. on May 24, 1989, but did not contact Carrier until 8:20 A.M. on that date. Thus, Carrier concluded that he had violated instructions, including Rule 30(a) which states that when an employee is "...detained from work on account of sickness or any other good cause [he] shall notify his foreman as early as possible."

The Claimant testified that he had injured his foot at work and that he followed medical advice by propping the foot and soaking it. He was taking Tylenol #3 every four hours and finally fell into a deep sleep and was not roused by the alarm clock at 6:00 A.M. on May 24. As soon as he did wake up, he telephoned the Carrier.

While we do not minimize an employee's obligation to report promptly to duty, our review of the record shows that the Carrier merely emphasized that need, and cited the pertinent rules. It did not, however, present any evidence to suggest that the Claimant's testimony was less than accurate. In fact, in the June 16, 1989, letter that found guilt, the author stated, "...I am sympathetic to your medical problems...." However, that same letter contains the testimonial conclusion that "In my experience pain will permit only fitful sleep...."

Based upon this record, we do not feel that the Carrier sustained its burden of proof and we will order the reprimand removed from the Employee's record. The Claimant seeks additional action in his Claim, but the relief sought is beyond our remedial authority.

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 15th day of May 1991.