

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Terminal Railway Alabama State Docks

STATEMENT OF CLAIM:

1. That the Terminal Railway Alabama State Docks, hereinafter referred as to the Carrier, violated the provisions of the Agreement when on May 31, 1989 they suspended Carman T. R. Stephens, hereinafter referred to as the Claimant, for a period of ninety (90) days without just cause.

2. And accordingly, the Carrier should be ordered to compensate Claimant for all time lost as a result of said suspension including overtime, if any, commencing on May 31, 1989 and through September 11, 1989, both dates inclusive.

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.

As a result of being placed in a restricted driving status until his driver's license was renewed, the Claimant was required to sign a document entitled "Vehicle Operator Counseling Statement" on January 9, 1989. This policy provides that any employee whose driver's license is revoked, regardless of reason, will not be allowed to operate a Carrier vehicle and if the employee's position requires the operation of a vehicle and the license is suspended or revoked, the employee may be suspended without pay or terminated from employment. On May 30, 1989, the Claimant's driver license was suspended for a period of ninety days due to his being caught while driving under the influence of alcohol. He reported this to his Supervisor and was immediately suspended from service on May 31, 1989. As a result of a Hearing held on June 27, 1989, the ninety day suspension was upheld.

The Organization's Claim rests in its argument that the Carrier violated the provisions of Rule 26 of the Agreement when it suspended the Claimant from service without first affording him a fair hearing and arbitrarily kept him suspended for a period of more than ninety days. Rule 26 states:

"No employee shall be disciplined without a fair hearing by the Carrier. Suspension in proper cases (the proper case is one where leaving the man in service pending an investigation would endanger the employee or his fellow employees) pending a hearing, which shall be prompt, shall not be deemed a violation of this rule"

The Organization asserts that the only case where an employee can be suspended from service prior to a fair hearing is when he or his fellow employees would be endangered by leaving him in service and that this is not such a case. The Organization also notes that there is nothing in the Agreement which requires a Carman to have a driver's license and that driving a vehicle on public roads and highways is not within the qualifications of a Carman as contained in Rule 47 which states:

"Any man who has served an apprenticeship or who has had four (4) years practical experience at carman's work, and who with the aids of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner, shall constitute a carman."

The Organization also argues that the Claimant was not given a fair and impartial Hearing in that the Hearing Officer made reference to letting "the case go to the Board." Procedurally, the Organization prays that the Claim be sustained as the transcript provided to it was not numbered.

There are two Rules and one policy for the Board's consideration in this matter. The Vehicle Operations Policy was instituted by management pursuant to its management rights. It was instituted for a bonafide business reason. At no time during the Investigation did the Organization challenge the right of the management to institute such a policy. The Organization merely stated that it was not aware of a change in the policy. In support of its policy, the Carrier asserts that a valid driver's licence is a condition of employment for Carmen employed by the Carrier. Nothing in Rule 47 precludes the Carrier from requiring Carmen to perform duties that are not inconsistent with those as outlined in Rule 47. Referring to Rule 26, the Board must determine whether or not the suspension, prior to a Hearing, shall not be deemed a violation of the Rule. A review of the record compels the Board to find that the suspension in the instant case was not a violation of the Rule. The Claimant was deprived of his driver's license for a ninety day period because he was found to be driving while intoxicated. This, combined with the

valid policy which provides for immediate suspension in the event of revocation of license, does not violate Rule 26 when combined with the fact that the Claimant was required to drive a vehicle as part of his duties. While the Organization notes that the Claimant was permitted to remain on the job for approximately one week while awaiting renewal of his license, the Board distinguishes that from the situation in the instant case where the Claimant could not drive for a period of ninety days. Additionally, once the Carrier asserted that driving was required and that there was no other non-driving position available for the Claimant, the burden then shifted to the Organization to show otherwise. The Organization failed in this regard. Regarding the Organization's Claim that the Claimant was denied Agreement due process because of the Hearing Officer's prejudgment remarks, the Board notes that the Vehicle Operations Policy is self-enforcing and that the Hearing Officer's comment, while inappropriate on its face, had no impact on a determination that was, in fact, brought about by the Claimant's suspension of his driver's license for driving while intoxicated. The Organization's failure to challenge the Vehicle Operations Policy rendered mitigation as the only purpose of the Investigation. Consequently, there was no mitigation of the Claimant's de facto guilt. Further, as noted above, the Organization failed to rebut the Carrier's assertion that no alternative work was available to the Claimant. Further, the Board rejects the Organization's procedural argument relating to the Carrier's failure to number the pages of the transcript. This argument is not contained in its Ex Parte Submission and, in any event, it was not shown that such an omission in any way prejudiced the Claimant or his Representatives.

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 2nd day of October 1991.