

Award 3513
Docket 3344
2-SOU-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer, when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21 RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L.-C.I.O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Leland F. Poe was unjustly suspended February 3, 1958 and discharged from the Carrier's service February 7, 1958.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe at the applicable straight time rate of pay for all time lost from February 3, 1958 to September 25, 1958, inclusive, for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 27, 1958, Carman Leland F. Poe, hereinafter referred to as the claimant was furloughed from the service of the Southern Railway Co., hereinafter referred to as the carrier. On January 27, 1958 the carrier recalled the claimant to service on the third shift, at the time claimant was ill with influenza, having been examined, treated and advised January 24, 1958 by Doctor N. G. Reed to stay in bed at least 10 days. Copy of Dr. Reed's statement is submitted herewith and identified as Exhibit A. Nevertheless, the claimant felt it his duty to report for work as instructed by the carrier on January 27, 1958 which he did. Claimant worked January 27 and 28, but before the completion of his shift on the 28th became ill and notified his foreman that he would not be able to work the next day January 29, 1958. On February 1, 1958, Claimant telephoned the carrier and advised that he was still ill and would report for work as soon as he felt better.

On February 3, 1958, carrier's general foreman, R. H. Bible, verbally notified the claimant to report to Master Mechanic Kimball's office for investigation February 3, 1958.

The investigation was held as per verbal notice on February 3, 1958, and a copy of the transcript of hearing is submitted herewith and identified as Exhibit B. The claimant was notified under date of February 7, 1958, that he was

The Board, in following the principles of its prior awards cannot do other than make a denial award.

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 employe 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 were given due notice of hearing thereon.

On February 7, 1958 Claimant Poe was dismissed from service following an investigation conducted on February 3, 1958. He was held out of service during this intervening period pending decision of the Carrier officer who conducted the investigation. The notice of dismissal gave as the reason for this action: "... failure to protect your assignment after being refused permission to be off work." Claimant was notified on September 25, 1958 that he could return to service. He did so on October 21, 1958. Thus in effect he was suspended from February 3, 1958 to the time he was offered reinstatement.

Claimant returned from furlough on Monday, January 27, 1958. During his tour of duty on January 28 he told his Foreman he was going to be off the following night. (His scheduled hours were 11:00 P.M. to 7:00 A.M.) The Foreman states Claimant said his reason for being off was to go to Atlanta. Claimant states he gave no reason. In any event, the Foreman told Claimant he could not be off. Claimant replied, according to the Foreman's unrefuted testimony: "I'm telling you now that I will be off tomorrow night." Claimant Poe did not report to work the next two nights, January 29 and 30. January 31 and February 1 were his rest days. Disciplinary proceedings were then undertaken.

Rule 21, which Claimant asserts in his own behalf, provides no protection for the conduct involved in this case. Claimant did not tell his Foreman he was sick nor did he assert any other good cause for his intended absence. It is Claimant's position, as given in his testimony at the investigation, that under the contract his only obligation was to tell his Foreman he was going to be off. We find Claimant to be mistaken in his premise. The contract does not protect an employe's refusal to follow the Carrier's instructions to report to work where no good cause for not reporting has been given.

There is basis in this record for disciplinary action against Claimant Poe. In view of his previous record of discipline as shown by the Carrier, and which has not been refuted, we conclude that the suspension which actually occurred in this case was not an unreasonable penalty.

AWARD

The Claimant's record shall show that he was under disciplinary suspension from February 3, 1958 to September 25, 1958. The request for pay lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1960.