

Award No. 3532
Docket No. 3528
2-HB&T-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE.

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Electrician K. W. Posey was unjustly treated and the provisions of the current agreement were violated when he was suspended from service for the period of August 17-21, 1958, inclusive.

2. That the Carrier be ordered to compensate K. W. Posey for five (5) days time, August 17-21, 1958, inclusive, in the amount he lost in wages during that period, due to suspension from service.

EMPLOYEES' STATEMENT OF FACTS: K. W. Posey, hereinafter referred to as the claimant, is employed as an electrician by the Houston Belt and Terminal Railway Company, hereinafter referred to as the carrier, at Houston, Texas and is assigned to work on the first shift — 7:00 A.M. to 3:00 P.M.

On August 4, 1958, the claimant was unavoidably detained from work and because of severe weather conditions which caused temporary loss of telephone communications, he was prevented from so notifying his foreman before the foreman went home at the end of his tour of duty.

Claimant returned to work on August 5, 1958 and subsequently was notified by letter (undated) to appear in the office of the master mechanic at 9:00 A.M., Thursday, August 7, 1958, for formal investigation on a charge of violation of Rule 16(d).

Investigation was held on August 7, 1958 and copy of the transcript is submitted herewith and identified as Exhibit A. The claimant was notified under date of August 13, 1958, that he was suspended from service for a period of fifteen (15) calendar days (see copy of letter, submitted herewith and identified as Exhibit B) and under date of August 14, 1958, was notified the suspension would start Saturday, August 16, 1958, and terminate August 30, 1958. Copy of letter is submitted herewith and identified as Exhibit C.

The claimant was returned to service after five (5) days suspension, returning to work August 22, 1958.

This dispute was handled with the carrier officials designated to handle such matters, all of whom declined to adjust the matter.

day before advising his foreman, with the explanation that he didn't see where it could have made any difference one way or another, in spite of the word "promptly" in Rule 16(d). Claimant himself admitted that he didn't advise his foreman as soon as possible.

The claimant's statements were not always consistent; for example, on Page 3 he said he lived about three or four miles out of Humble, while on Page 5 he makes it around six miles.

Carrier wishes to point out to you Mr. Ferguson's lengthy question to claimant started on Page 6 and concluded on Page 7 and the two questions directed at Mr. Pettus at bottom of Page 9. Carrier has no objection to them so long as they are recognized as questions, and therefore in no way considered evidence; at first glance they are misleading, though, in picturing claimant as having walked to various neighbors' houses some a half a mile away* and as cosuming thirty or forty minutes trying to start his automobile — carrier can find no statement of claimant to support either, and it strikes carrier as strange that it would take an electrician that long to discover that the battery was down.

In conclusion, carrier would summarize by stating that it considers that claimant grossly violated Rule 16(d): first and principally in laying off August 4, 1958, withut first obtaining permission from his foreman, since admittedly it was not a case of sickness and, in carrier's opinion, no "other good cause" has been shown; and second, even though it be decided that "other good cause" did exist, in failing to advise the foreman thereof promptly. As to the first, claimant was asked on Page 3: "Do you think that not showing up for duty and not notifying the foreman that you would be absent was the correct thing to do?" His answer was: "No Sir". As to the second, this was the instance, also on Page 3, where clamiant recognized that he was supposed to notify his foreman as soon as possible by remarking that he "didn't see where it could have made any difference one way or another." Here he was asked the question; "The rules say your foreman should be promptly advised, you didn't advise him as soon as possible did you?" Claimant again upheld: "No Sir."

Carrier continues to believe that undue leniency was shown claimant in this case, and requests that you deny this claim in its entirety.

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.

The parties to said dispute waived right of appearance at hearing thereon.

Claimant was charged with violation of rule of the Working Agreement reading:

Employes shall not lay off without first obtaining permission from their foremen to do so except in case of sickness or other good cause, of which the foreman shall be promptly advised.

* Claimant was asked: "Did you make any further effort to notify Mr. Pettus when you found your telephone out of order?" His answer: "There wasn't any other way I could."

After formal investigation he was notified that:

"Facts developed in this investigation proved that you were in violation when you failed to obtain permission from your foreman or promptly advise your foreman your reason for being absent * * * For this violation you are hereby suspended * * * "

Claim is made for the five day wage loss from such suspension.

Upon appeal of the case to the President and General Manager he wrote to the General Chairman in connection with his denial of the appeal:

"While there might be some question as to whether Posey was justified in staying off the job August 4 without first obtaining permission from his foreman, certainly there can be no question whatsoever but that he failed to comply with that part of the rule which requires that under the exception "in cases of sickness or other good cause" the foreman shall be promptly advised."

In its submission here Carrier asserts, to the contrary:

"Carrier's principal criticism of Claimant in this case is not that he failed to "notify" his supervision under the weather conditions but that he failed to brave those "weather elements" in getting to his job."

Where Carrier is unable to determine on what ground claimant should be suspended, this Board will not attempt to do so.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1960.