

Award No. 6002

Docket No. 5779

2-N&W-SM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Sheet Metal Worker E. P. Brown was unjustly denied the right to complete his bulletined hours when he reported for work Friday, September 1, 1967.

2. That accordingly, the Carrier be ordered to compensate Sheet Metal Worker E. P. Brown in the amount of six (6) hours and forty (40) minutes at the straight-time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker E. P. Brown, hereinafter referred to as the claimant, is regularly employed as a sheet metal worker by the Norfolk and Western Railway Company, hereinafter referred to as the carrier, at its Lamberts Point Shop, Norfolk, Virginia, with regularly assigned work week of Monday through Friday, 7 A. M. to 3 P. M., with rest days of Saturday and Sunday.

On Thursday, August 31, 1967, claimant reported for work at his normal starting time on his regular assignment, and, after working approximately one hour and thirty minutes, requested permission from Foreman B. B. Johnson to mark off and go home for the balance of the day because of sick headache and stomach discomfort. Said permission was granted by Foreman Johnson and claimant marked off and left the shop at 8:30 A. M.

On Friday, September 1, 1967, claimant reported for work at his normal starting time on his regular assignment, received his time card and went to work. After working approximately one hour and twenty minutes, Foreman Johnson approached the claimant and informed him to turn in his time card and not report to duty again until he had obtained a doctor's certificate, certifying that he was physically fit to return to duty. Claimant advised Foreman Johnson that he felt all right, but Foreman Johnson refused to allow claimant to complete the balance of the work day.

rendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language."

In conclusion, the carrier respectfully submits that the facts and evidence presented in carrier's statement of facts, position and hereinafter shown as a summary clearly shows the claim is not supported by the agreement and should be denied.

CARRIER'S SUMMARY

1. Carrier's statement of facts and submission supports its position in that the claimant was not discriminated against.

2. Past practice supports the carrier in that, in the past, when employees have been off account sickness they have been required to obtain doctor's examination before returning to duty.

3. Any loss of time or monetary loss sustained by the claimant was entirely due to the claimant's own negligence.

4. Many prior board awards have held:

- (a) Management has certain rights and prerogatives to its affairs when not restricted by the agreement. See Second Division Award 3862.
- (b) The claimant relied on Rule 37 or discipline rule for the payment for time lost and the board has ruled that the discipline rule is not applicable under such circumstances. See Second Division Awards 2626, 2799 and Third Division Award 9421.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Had Carrier suspected claimant of feigning illness, and had he been called in for investigation and proved guilty, claimant would properly be subject to discipline. But after giving claimant permission to mark off sick, and excusing him from the remainder of his tour of duty on August 31, 1967, Carrier may not reverse itself, on his return to work the following day, and demand that he produce a doctor's certificate confirming that illness.

Certainly, after being on the job for one hour and twenty minutes, with no apparent discomfort or disability, Carrier had no logical basis for insisting

that claimant obtain a doctor's certificate approving his resumption of work. It would appear that this kind of harassment is not compatible with Rule 21 and 37 of the Shop Crafts Agreement.

Accordingly, it must be concluded that claimant was unjustly suspended for six hours and forty minutes on the date of claim herein.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1970.