

Award No. 6040**Docket No. 5861****2-IC-EW-'70****NATIONAL RAILROAD ADJUSTMENT BOARD****SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Electrician A. J. Ritter was unjustly suspended from service at Weldon Coach Yard, Illinois Central Railroad Company, Chicago, Illinois, for a thirty (30) day period beginning October 24, 1968 up to and including November 23, 1968.

2. That the Illinois Central Railroad Company be ordered to compensate Electrician A. J. Ritter for all time lost account of the aforementioned unjust suspension.

3. That the Carrier be ordered to allow interest at six per cent (6%) per annum compounded annually from the anniversary date of the claim.

EMPLOYEES' STATEMENT OF FACTS: That A. J. Ritter, hereinafter referred to as the claimant, entered the service of the Illinois Central Railroad Company, hereinafter referred to as the carrier, as an Electrician on July 22, 1946. At the time of the incident giving rise to the instant claim, claimant was regularly employed by the carrier as an electrician at its Weldon Coach Yard, Chicago, Illinois, with assigned hours and work week of 4:00 P. M. to 12:00 Midnight, Friday, Saturday and Sunday; 12:00 Midnight to 8:00 A. M., Monday and Tuesday; Wednesday and Thursday as rest days.

During claimant's twenty-three (23) years of service with the carrier, he was employed in the position of electrical foreman for approximately nine (9) of those years.

Around 3:00 P. M., Saturday, October 5, 1968, prior to claimant's regular starting time, which was 4:00 P. M. on that day, claimant called the general foreman's office at carrier's Weldon Coach Yard. Second Shift Gang

its judgment for that of the carrier in disciplinary matters, unless carriers action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion.

Award 3092 Second Division (Burke):

This and other Divisions of the Board have often said that they would not substitute its own judgment for that of the carrier unless its action in that respect can be said to be arbitrary, unreasonable or unjust.

Also, See Second Division Awards 2087, 2769, 3874, 4000, 4001, 4098, 4132, 4195, 4199, 4693, and Third Division Awards 419, 431, 1022, 2297, 2632, 3112, 3125, 3149, 3235, 3984, 3985, 3986, 5011, 5032, 5881, and 5974.

The company was not arbitrary or capricious in the assessment of the discipline in this case, as the evidence will substantiate that a 30-day suspension was warranted.

CONCLUSION:

In the light of the direct testimony of Mr. Kuknyo that the claimant did not request or receive permission to be off on the day in question, and the statements by the claimant himself that he still wanted to speak with his foreman (thereby indicating that he actually did not feel that he had properly secured permission to be absent from work), there is substantial evidence to support the conclusion that Mr. Ritter should have been suspended for thirty days.

Furthermore, the company has shown that the Board should not disturb the discipline assessed because the company was neither arbitrary nor capricious in assessing the discipline.

The company asks the Board to deny the claim.

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.

At the time of the involved incident, Claimant was regularly employed as an Electrician in its Weldon Coach Yard, Chicago, Illinois. Claimant had had 23 years of service and during his employment was employed in the position of Electrical Foreman for approximately 9 of those years. On Saturday, October 5, 1968, Claimant was scheduled to begin work at 4:00 P. M. About 3:15 P. M., 45 minutes before he was scheduled to work, Claimant telephoned the office of the General Foreman and informed a Foreman that he (Claimant) was going to be off because his son was in town and he wanted to spend a couple of days with him. The Foreman stated that he would deliver the message. When Claimant failed to show for his regular

shift, the Shop Superintendent was notified and an investigation was held. The investigation determined that Claimant had failed to ask permission and did not receive permission to be off. The investigation further determined that Claimant had previously been warned for failure to comply with the rule governing time taken off from duty. Claimant was suspended for 30 days. The Organization contends that he was prejudged prior to his investigation; that the investigating officer refused to furnish a copy of the report of the prior investigation where no punishment was assessed; and that the punishment was disproportionate to the offense charged to such an extent that it indicated prejudice. The Organization further contends that this Claimant was not guilty and the charges brought against him should have been withdrawn. Carrier contends that the rules require the employee to obtain permission to be off; that the discipline assessed was justified and that this Board should not substitute its judgment for that of the Management for the reason that the discipline assessed was neither arbitrary nor capricious. The Organization further contends that permission to lay off was granted to this Claimant.

A careful review of the record indicates that Claimant substantially complied with Rule 23 which requires an employee to obtain permission from his Foreman, if possible, before absenting himself from work. There is no dispute in this case to the effect that Claimant called the General Foreman's office and informed a Foreman that his son was in town; that he wanted to spend a couple of days with him; and that he would be off work because of that reason. The Foreman stated: "O.K., I'll deliver the message." The Foreman gave no indication whatsoever that Claimant would not be allowed to take the time off; that Claimant should talk with anyone else about taking off from work; or that permission to take off was being denied. In fact, the conversation indicated in every respect that permission was granted. By failing to use words of constraint, the Foreman acquiesced and this acquiescence must be implied by his conduct in dropping the matter at that point.

Under the circumstances, this Board determines that the Carrier acted in an arbitrary and capricious manner and that the punishment assessed was excessive.

By this opinion, this Board does not condone employees taking off work without first obtaining permission, as required under the rules contained in the Agreement. However, in this instance, the Board feels that permission was granted Claimant to take off work.

This Board will sustain Part 1 and 2 of the claim, but will deny Part 3, pertaining to interest.

AWARD

Claim 1 and 2 sustained; Claim 3 (interest) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1970.

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