Award No. 6057
Docket No. 5784
2-C&O-MA-'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. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

THE CHESAPEAKE & OHIO RAILWAY COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Machinist H. G. Robinson was unjustly suspended from service on March 16, 1968 for a period of three (3) actual working days.

2. That accordingly the Carrier be ordered to compensate the claimant for three days for loss of wages as a result thereof.

3. That accordingly the Carrier be ordered to clear H. G. Robinson's record of this charge.

EMPLOYES' STATEMENT OF FACTS: Machinist H. G. Robinson, hereinafter referred to as the claimant was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the carrier, for a period of approximately twenty-eight (28) years at various carrier shops and was presently employed in carrier's Handley, West Virginia Shop on the 11:00 P. M. to 7:00 A. M. shift, Monday through Friday, rest days Saturday and Sunday.

The master mechanic, L. S. Fidler, Huntington, West Virginia, charged the claimant with being absent without permission and notified claimant under date of February 21, 1968 to attend an investigation to be held in general foreman's office, Handley, West Virginia at 1:00 P. M., February 27, 1968.

"You are charged with responsibility of being absent without permission on your regular assignment, third shift, Monday, February 19, 1968."

Hearing was postponed and was held on the above charge on February 28, 1968. The hearing was conducted by Master Mechanic Fidler.

7. Claimant was not "unavoidably kept from work" as set out in Rule 22.

8. Claimant was not "sick" as he belatedly reported at the investigation and therefore, falsified his reason for his absence from work.

The board has repeatedly held that it will not disturb the carrier's discipline unless it can be shown that the carrier was arbitrary, unreasonable or unjust. This can be seen by the following taken from Second Division Award 3092:

> "We think the language contained in Award 1692 of this Division is persuasive. 'The question then remains, was the penalty imposed excessive? This and other Divisions of the Board have often said that they would not substitute their judgment for that of the Carrier unless its action in that respect can be said to be arbitrary, unreasonable, or unjust.' The claim must be denied."

Carrier submits that the discipline rendered in the instant case was not arbitrary, unjust or unreasonable but quite the contrary carrier was extremely lenient inasmuch as Robinson lost only three days which was minimal especially in view of the seriousness of the offense for which he was charged and found guilty.

It cannot be said that Robinson was not on notice because he had been found guilty of similar offenses on two previous occasions. He certainly was in position to know that he could put his job in jeopardy by repeated infractions, yet the previous discipline rendered apparently made no impression upon him.

With respect to taking into consideration an employe's prior service record in assessing discipline, the following may be found in Second Division Award 3430:

> "The Carrier has the right to expect its employes to observe the Rules and perform their work. Likewise **when the carrier is assessing penalties they should take into consideration the entire service record of the employe. . . .**" (Emphasis ours.)

In the instant case, the carrier did just that. Robinson's record was not without blemish and the discipline rendered was fully justified.

The claim is without merit and should be denied.

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 waived right of appearance at hearing thereon.

The circumstance that the Master Mechanic served in multiple capacities in filing charges, conducting the investigation and assessing discipline, does not in and of itself constitute reversible error where, as here, it appears from the transcript of investigation that the claimant was afforded a fair hearing. See National Railroad Adjustment Board Awards 5855 and 5972 (Second Division) and 16678 (Third Division).

By his own admission claimant concedes that he did not obtain permission to lay off from work on his regular assignment as Machinist at Handley, W. Va. Roundhouse on third shift (11:00 P. M. to 7:00 A. M.) Monday, February 19, 1968. He merely had someone telephone the Roundhouse Clerk at about 7:30 P. M. to report that he would not be at work that night. He didn't ask for and wasn't given permission to be absent. When it later developed that he did not have a good reason for staying away from work he became vulnerable to discipline for violating Rule 21.

The testimony pertaining to claimant's intoxication went to the question of whether there was good cause for claimant's absence from work, and for that reason it was clearly admissible. Patently, Rules 21 and 22 stand to dissuade claimant from staying away from his job to get drunk. In the circumstances of this case, the five calendar day suspension (three working days) was not too severe a penalty.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1970.

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