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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6546
Docket No. 6420
2-MP-EW-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler, Jr. when award was rendered.

Parties to Dispute:

(System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That Electrician D. M. Plumlee was unjustly dealt with when he was dismissed from the service of the Missouri Pacific Railroad Company effective April 27, 1971.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician Plumlee as follows:
 - (a) Eight hours (8') per day at pro rata rate, five (5) days per week, beginning April 27, 1971;
 - (b) Returned to service with seniority rights unimpaired;
 - (c) Made whole for all vacation rights;
 - (d) Made whole for all health and welfare and insurance benefits;
 - (e) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance.

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 Claimant was employed by the carrier as an electrician at North Little Rock, Arkansas and was cited for being a party to a sleep fest, failing to perform work properly, and signing for work not properly done on his regular tour of April 16, 1971. An investigation was held on the property on April 20, 1971 and on April 27, 1971 the Claimant was dismissed from service by Terminal Superintendent J. B. McCormack. The Organization contended the Claimant was unjustly dealt with and the carrier contends the Organization's claim was untimely filed. We will deal with the question of timeliness first.

The carrier cited the note to Rule 31 of the Agreement and the relevant terms of this rule are:

"TIME CLAIMS AND GRIEVANCES
Rule 31.

- (a) All claims or grievances must be presented in writing by or behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

NOTE: The officer first named below has been designated by the Carrier as the officer authorized to receive written claims and grievances and the succeeding officers are those to whom appeals may be taken, subject to change by the Carrier upon notice to General Chairman. All points except Sedalia and De Soto Shops and Palestine Reclamation Plant.

Discipline

Superintendent, Assistant General Manager, Mechanical Officer, Chief Personnel Officer.

The evidence disclosed the disciplinary form letter was dated April 27, 1971 (Carrier Exhibit D) and received by the Claimant sometime after April 27th. On June 21, 1971 Electrician Local Chairman E. S. Collins wrote Terminal Superintendent T. B. McCormack:

"In reference to your letter of April 27, 1971 advising Electrician D. M. Plumlee that he had been dismissed from service.

Your decision is not acceptable and will be appealed."

and on the same date Collins wrote to Mechanical Superintendent P. E. Latsha:

"On April 27, 1971, Terminal Superintendent J. B. McCormack dismissed Electrician D. M. Plumlee for loafing, being a party to a sleep fest, failure to perform work properly and signing for work not properly done."

The employees feel that Mr. Plumlee's dismissal was unjust and request that he be returned to work with full pay for all time lost and with this service date and seniority date intact.

In a letter dated July 2, 1971 Mechanical Superintendent P. E. Latsha replied to Local Chairman Collins stating among other things:

Appeal for reinstatement of Electrician D. M. Plumlee should have been referred to Terminal Superintendent J. B. McCormack for his consideration first, since he was officer administering discipline.

The Agreement used the word "Superintendent" as the officer first named as authorized to receive written claims. The evidence disclosed the carrier had Terminal Superintendent and a Mechanical Superintendent at North Little Rock. There may have been others with the word Superintendent in their title, but the evidence did not disclose there was an individual with the title of Superintendent. Under these circumstances the Agreement is ambiguous and since Terminal Superintendent J. V. McCormack did receive Collin's letter in his office on June 24, 1971 (Carrier Exhibit C) that his decision would be appealed; the grievance is procedurally correct in being appealed to McCormack's office.

The evidence disclosed there was a follow-up letter dated July 15, 1971 from Collins to McCormack and on July 19, 1971 McCormack denied the first appeal.

On September 15, 1971 Electrician General Chairman George Kipp filed an appeal to Assistant General Manager D. T. Barksdale. The appeal was within the 60 days of the time McCormack denied Collin's appeal. It is the opinion of the Board that General Chairman Kipp's appeal was timely.

General Chairman Kipp's appeal was denied by D. T. Barksdale on September 21, 1971 and by letter dated September 25, 1971 General Chairman Kipp appealed the matter to Chief Mechanical Officer J. G. German.

Mr. German denied the claim by letter dated October 21, 1971 and by letter dated November 3, 1971 General Chairman Kipp appealed the claim to Director of Labor Relations O. B. Sayers. The claim was denied by Mr. Sayers by letter dated December 10, 1971.

After a careful reading of the carrier's contention that the claim was procedurally incorrect, it is the ruling of this Board that the matter has satisfied the grievance procedure and is properly before the Board.

The charge against the Claimant was that he was a party to a sleep fest, failed to perform work properly, and signing for work not properly done.

The evidence disclosed the Claimant was slumped down in a seat during his tour of duty. The evidence disclosed the Main Generator on Unit 237 had been sprayed with cleaning fluid (Mr. Lander's testimony) and was still wet from the spraying at 4:30 AM on the date in question. The Claimant testified when he went on his tour he worked on numerous small items such as replacement of doors, covers, lids and guards. Next, he sprayed the main and auxiliary generators with the approved cleaner. He sprayed 3 times and testified the spraying made him ill. He went to supper and after supper while laying down to clean the main generator he became sick again. General Foreman Landers testified that in his opinion the cleaning fluid would make a man ill when used in an enclosed area. The interior work area of a locomotive is an enclosed area and it is the finding of this Board that the Claimant was truthful on the morning in question and that working with the approved cleaner made him sick. Certainly if an employee becomes sick at his stomach he may not properly perform all the work assigned to him.

The Board will address itself to the matter of signing for work not done. The Claimant admits signing for wiping the main generators and insulators and that he did not get these tasks completed. Shop Superintendent Daniel testified that at approximately 7 AM he went aboard unit 237 to review the work done. An electrician had removed the covers from the traction motors, the main generators, and auxiliary generators. Daniel's testimony disclosed the traction motors were in excellent condition but the main generator had not been serviced properly. In addition the auxiliary generator had not been touched at all. Item 4 on the work sheet for unit 237 was captioned "wipe insulators in main generator" and this item was signed for by Claimant. Item 6 on the work sheet was captioned "spray & clean main & aux generator & elect. cabinet doors" and this item was signed for by the Claimant. It is the ruling of this Board that the Claimant did falsify the work records.

In the operation of a railroad the many crafts must perform responsible work and honestly report their work to management. Failure to perform assigned work will cause expensive delays and unnecessary breakdowns. When an employee signs his name to a work sheet showing that certain tasks have been performed - his honor and his character go along with his signature. Clearly when an employee materially falsifies by signing for the work not done the carrier has just cause for discharge.

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E A Killeen D L
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1973.