

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International
Association
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(The Alton & Southern Railway Company

Dispute: Claim of Employees:

1. That the Alton and Southern Railway Company violated the controlling agreement, particularly Rule 19(e) and (f), when they unjustly dismissed Sheet Metal Worker Ronald Cooper from their service effective November 19, 1971.
2. That accordingly, the Alton and Southern Railroad Company, who returned Sheet Metal Worker Cooper to service on July 14, 1972 with all seniority rights unimpaired, now be ordered to compensate him as follows:
 1. Compensate Claimant for all time lost with 6% interest per annum;
 2. Make whole for all vacation rights;
 3. Pay Hospital Association dues for all time out of service;
 4. Pay premiums for Group Life Insurance for all time held out of service;
 5. Compensate Claimant for all holidays while out of service;
 6. Compensate Claimant for all sick pay;
 7. Make whole for all insurance premiums;
 8. Compensate Claimant for all jury duty pay lost.

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.

Claimant was dismissed from Carrier's service after hearing and investigation on the charge of "falsifying the reason for not protecting your assignment 7:00 a.m. to 3:00 p.m." on October 19 and 20, 1971.

Carrier based its finding of culpability on the following:

1. Testimony by Locomotive Foreman Milkert that at approximately 7:30 a.m., October 19, 1971 "a young lady" called and stated that Claimant would not be in to work that day because of a sore throat. When questioned further the "young lady" stated she thought Claimant's tonsils were bothering him.

The name of the "young lady" was not asked nor was her relationship to Claimant determined.

2. Testimony by Carrier's Special Agent Crum that in the process of investigating the whereabouts of Claimant he was informed by telephone that Claimant was arrested by the police at 12:10 a.m., October 19, 1971 and released about 5:00 p.m., October 20, 1971.

Claimant testified that on the night of October 19, 1971 he was attempting to get medical treatment at St. Mary's Hospital, and was arrested at the hospital before he could receive treatment.

Claimant, during his testimony, was not asked by Carrier to identify the "young lady" nor was Claimant asked whether he authorized her to act on his behalf.

Despite the fact that Carrier contends that the discipline imposed was warranted not only for falsifying the reason for his absence, but also for failing to protect his assignment for two days,*/ Claimant was charged only with falsifying the reason for his absence and we shall consider only that charge.

*/ In its submission Carrier states:

"The discipline assessed in the case of this short-service employee for such an offense is fully justified. Here, an employee failed to protect his assignment on two days and not only failed to protect his assignment but falsified the reason for his absence. For that reason, discipline as severe as dismissal from service was fully justified."

In its Rebuttal submission Carrier states:

"We repeat that the Employees nowhere state that claimant's wife did not call the Locomotive Foreman. They rest their case solely on the argument that the Carrier did not prove she was claimants' wife. The presumption is so great from the nature of the conversation that it was his wife or some other close member of the family that the Carrier was fully justified in concluding that the young lady was calling on behalf of claimant and that she had falsified the reason for claimants' absence in accordance with his wishes." (Underscoring added.)

It is clear from the record in this dispute that Carrier's conclusions are inconsistent with even the most minimal standards of sufficiency and probativeness. The Board cannot infer, as Carrier did, from the fact of a phone call that the information conveyed was falsified and that such alleged falsification was in accordance with Claimant's wishes. Carrier merely based inference upon inference to reach its conclusion of culpability, and this it cannot do.

The claim therefore shall be sustained in accordance with the provisions of Rule 19 (f) of the Agreement between the parties.

A W A R D

Claim sustained per findings herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of February, 1974.