

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute:      ( System Federation No. 2, Railway Employees'  
                                 ( Department, A.F. of L. - C.I.O.  
                                 ( (Carmen)  
                                 ( Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That Carman J. E. McCain, Houston, Texas, was unjustly dealt with by the Houston Belt & Terminal Railway Company when he was suspended from service thirty (30) days beginning April 17, 1972.
2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Carman McCain the amount of eight hours (8') per day, five (5) days per week beginning April 17, 1972 until returned to service following the thirty (30) day suspension.

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 suffered a thirty day disciplinary suspension of work for allegedly falsifying his time card on the morning of March 10, 1972.

Recognizing the need that Carriers must be enabled to operate effectively, this Board has afforded wide latitude to management in disciplining employes for malfeasances and misfeasances. We have enunciated repeatedly that we would not interfere with disciplinary penalties assessed against employes absent a showing that the punishment imposed was arbitrary, capricious, unreasonable or excessive amounting to an abuse of discretion (Awards 6392, 6240, 6198, 6196, 4195, 4098, and

4000). We have stated that a disciplinary decision is "unreasonable, arbitrary, capricious or discriminatory ... when the degree of discipline is not reasonably related to the seriousness of the proven offense," (Award 6198) and "we reserve the right to correct a penalty which is excessive or unreasonable in the premises (Awards 6236, 5703 and 3894).

In evaluating whether there was justification for the disciplinary action taken, we have not required proof beyond a reasonable doubt or even by the preponderance of evidence, but we do require that the record establish that there was substantial evidence to sustain a finding of just and sufficient cause for the penalty assessed. (First Division Award 16785 and Second Division Award 6368).

The United States Supreme Court set forth the following:

"Substantial evidence is more than mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board, 305 U. S. 197, 229.)

The record in this case was reviewed with the above concepts in mind.

It is evident that it was a regular practice for Carrier's yard employees on the 11 P.M. to 7 A.M. shift to prepare their time cards when reporting to work and turning them in to the Yard Foreman at that time. The hearing transcript contains the following testimony of the Foreman:

"....I always sign the time cards when I come in to work at 11 o'clock..." (Tr. pg. 10)

"... I signed the time card when I came to work when all the men are there." (Tr. pg. 12)

Claimant, following the supervisor's policy, made entries on his time card for the shift starting 11 P.M. March 9, 1972 showing eight hours of work. At 5 A.M., after working six hours, he reported to the Foreman that pains in one of his legs made it impossible to continue to perform his duties and that he wanted to be transported to a physician for treatment. The Foreman was busily engaged at the time and told Claimant that he could not satisfy his request. The Claimant left. The Foreman states that:

"...he went outside and I was trying to get his time card out of the mail... I was going to get him to change his card, but he was gone. (Tr. pg. 10) He had turned in his time card for

"8 hours. I erased my name from it on account he had worked only 6 hours and I did not want to approve it for eight hours."  
(TR. pg. 9)

Thus the Foreman had collected the time cards of all employees under his supervision at the commencement of the shift; signed them as correct at that time and had them ready to mail to Carrier's payroll department. When Claimant reported being ill and left the yard, the Foreman was otherwise involved and did not submit Claimant's erroneously recorded time card to him for correction. The very next day, March 10, 1972, prior to Claimant's time to report for work, Carrier issued a charge and notice to Claimant that formal investigation thereon had been ordered. Claimant was never afforded an opportunity to rectify his time card and he never demanded or received payment for hours not worked. There is not the slightest proof that Claimant sought to defraud the Carrier. He followed the procedure desired by his supervisor. The time card was in the Foreman's possession, approved by the supervisor prior to the end of the shift. In Award 4983, the Board, faced with a somewhat similar fact pattern stated, "... the incident would ... be an indication that management should tighten up time card practices with appropriate revisions and instructions." (See also Awards 4985 and 5011)

This record fails to meet the requirements of the guidelines set forth hereinabove to permit sustaining the disciplining of the Claimant.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of May, 1974.