

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Clinchfield Railroad Company

Dispute: Claim of Employes:

1. That under the terms of the Agreement, Machinist J. D. Kniceley was unjustly and improperly suspended from the service of the Clinchfield Railroad Company, for a period of sixty days (60), beginning on the date of September 13, 1972, and ending on the date of November 13, 1972.
2. That accordingly the Clinchfield Railroad Company be ordered to compensate Machinist J. D. Kniceley in the amount of eight (8) hours at the pro rata for each day of his work week assignment, beginning on the date of September 13, 1972, and ending on the date of November 13, 1972.

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 instant claim involves Petitioner's contention that claimant was unjustly suspended for 60 days following a hearing at which he was charged with: (1) violating Carrier's Rule 802 in that he engaged in outside employment without permission from proper authority; (2) marking off from work under false pretenses on September 11 and 12, 1972; and (3) excessive absenteeism. It is the Petitioner's position that Carrier has failed to sustain the foregoing charges brought against claimant.

The hearing revealed that claimant marked off sick on September 11 and 12, 1972. However, on both these dates he was observed by a Carrier witness, Mr. Bowman, at a service station owned by him. This was corroborated by Mr. Lukianoff, a Special Agent with Carrier, who had also observed him at the service station on these dates. Claimant admitted being at the service station on September 11 and 12, 1972 but contends that he was not working. This was corroborated by several individuals who work for claimant at the service station.

We do not believe there was any evidence to the effect that claimant was not ill when he left work on Saturday, September 9, 1972. However, he was not then justified in remaining off work on September 11 and 12, and then proceed to engage in his outside business. It may well be that claimant was not engaged in any physical work at his service station on the days in question. Yet, it is not disputed that claimant is the owner of this service station, and he can therefore be engaged in managing this business without performing any physical chores. We believe the record reveals that claimant deceived the Carrier when he marked off due to illness then proceeded to engage in outside business at his service station on September 11 and 12, 1972.

We feel that claimant's action constituted dishonesty justifying assessment of discipline. Nor do we believe the discipline imposed to be excessive in light of the fact that claimant had been previously suspended in May, 1972 for 30 days for having marked off sick when he was actually engaged in outside business.

Having concluded that suspension for 60 days was warranted due to claimant's absence from work on September 11 and 12, 1972 under false pretenses, this Board therefore finds it unnecessary to pass upon the other charges preferred against claimant.

A W A R D

Claim denied.

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 14th day of February, 1975.