

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7188
Docket No. 7029
2-C&NW-CM-'76

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Freight Car Welder James A. Balom, was unjustly suspended ten days.
2. Freight Car Welder James A. Balom was erroneously charged with not protecting his assignment in that he was off duty on Monday, January 6, 1975, without proper notification or permission.
3. That the Chicago and North Western Transportation Company be ordered to compensate Freight Car Welder James A. Balom for the ten days he was improperly suspended.

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 given ten days' suspension from service "for not protecting your assignment in that you were off duty on Monday, January 6, 1975, without proper notification or permission."

As to the conduct of the investigative hearing in this matter, this Board finds no substantial impropriety for the identical reasons detailed in Award No. 7187, which involved the same claimant and the same supervisor. These reasons need not be repeated here.

There is no dispute as to the basic facts: Claimant was due to report for work at 8 a.m. on the day in question. He did not so report. He telephoned his supervisor at 11:05 a.m., stating his absence to that point was for personal reasons. He later testified in the hearing that he had been "detained" but offered no further explanation.

(This Board finds irrelevant to these proceedings the fact that Claimant offered to come to work for the remainder of the work day, and permission to do so was refused.)

The Organization states that the only applicable rule is Rule 20, which, the Organization claims, was not violated by the Claimant. Rule 20 reads as follows:

"Employees wishing to be absent from work must obtain leave of absence from the foreman whenever practicable to do so, and foreman will endeavor to grant leave of absence when requested.

An employe detained from work account of sickness or from any other cause shall notify his foreman.

Employes not in the habit of reporting late will be permitted to go to work on the first quarter hour and receive pay from the time starting work."

The Carrier has a further requirement, through bulletin board notice of September 24, 1974, stating in part, "Employees desiring to be absent for work or late for work must call in before their assigned starting time in order to allow supervision time to properly assign their help."

The Organization claims this unilateral notice an unfair invasion of Rule 20. This Board does not agree and finds the notice a reasonable exercise of the Carrier's right to organize its work force efficiently.

This Board further finds nothing in Rule 20 to protect an employee from the duty to meet the requirements of reporting tardiness or absence before the assigned starting time.

This Board is further impressed by the record which shows that the claimant failed at any time to state, as reason for his late call, anything other than he was "detained". The Carrier's judgment in not accepting this single word of explanation cannot be gainsaid by this Board. Given nothing further, the Carrier was hardly in a position to make allowances.

As to the severity of the penalty, this Board notes that the claimant has a record (aside from one instance wherein a letter of warning was withdrawn) of five separate letters of warning between July 17, 1973, and October 3, 1974 for absenteeism and tardiness -- all of these coming shortly after his date of employment, April 10, 1973. In this Board's view, these previous warnings are more than sufficient to support the judgment of the Carrier in assessing a ten-day suspension from service.

A W A R D

Claim denied.

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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 30th day of November, 1976.