

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Controlling Agreement when it improperly dismissed Machinist Glenn D. Hidey from its service on October 17, 1973.
2. That accordingly the Norfolk and Western Railway Company be ordered to restore Machinist Glenn D. Hidey to service with all seniority and all other rights and benefits unimpaired and to compensate him for all lost compensation since date of discharge.

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 employed as a machinist at Carrier's Brewster, Ohio, shops. On October 12, 1973, Carrier wrote him that he had been absent from work without permission since October 6, 1973 and that he should report to the General Foreman's office within five days or his name would be removed from the seniority roster and his record closed. Claimant did not report; and on October 17, 1973 he was sent a letter that he had been dropped from the seniority roster and the payroll.

On November 30, 1973, the Local Chairman requested a hearing in connection with such action of the Carrier. Notice of hearing was issued on the charge that Claimant was absent from his regular assignment without permission on October 6-9-10-11-12-13-16 and 17, 1973 "in violation of Rule 10 of the current agreement." Carrier also stated in the notice of hearing that the request for a hearing was untimely under Rule 13 of the agreement and that the scheduling of a hearing was without prejudice to, or waiver of, that objection.

The hearing was held on December 20, 1973. By letter dated January 22, 1974, Carrier advised that "Claimant's dismissal from the service" of Carrier "is upheld and in effect".

Carrier presses its untimeliness objection by reference to the 10 day time limit stated in Rule 13(D). Petitioner responds by citation of the 60 day time limit provided in Article V of the August 21, 1954 National Agreement.

Rule 10(A), relied on by the Carrier with respect to the merits of the dispute, reads as follows:

"When an employee wishes to be absent from duty he must obtain permission from his foreman. If detained from work on account of illness or for any other good cause he shall notify his foreman as promptly as possible. If he fails to do so, it will be considered sufficient cause to drop his name from the payrolls and seniority rosters. An employee off duty must notify his foreman when he expects to return to work in sufficient time to permit release of relief man working in his place. Failure to so notify the foreman shall void claim for time due because of reporting and not being used on day of reporting."

Petitioner contends that Claimant did not violate this rule in that his absence from duty was not due to his "wishes" but rather the result of his confinement to jail in connection with a traffic violation, and that Claimant's wife gave Carrier notice of his absence in accordance with the rule.

Carrier contends that its actions are fully supported by the record.

The confinement of Claimant to jail did not automatically relieve him from compliance with his obligations as an employee of the Carrier including the requirements of Rule 10(A); and presumably, at least, he must bear the responsibility for the conduct which resulted in his incarceration. The critical question is whether the record discloses substantial evidence to support Carrier's finding that Claimant violated Rule 10(A).

We are constrained to answer that question in the affirmative. There is no evidence that Claimant obtained permission for his absence from work. The testimony of Claimant's wife concerning her telephone conversation with a Carrier official does not warrant a contrary conclusion. Her testimony plainly indicates that she did not request or receive permission for the Claimant to be absent from duty. In addition, this Division has held that incarceration does not constitute unavoidable absence from work for "other good cause". (Second Division Awards 6606, 4669). Thus, we cannot regard the second sentence of Rule 10(A) relating to absence from work on account of illness or "for any other good cause" as applicable in the instant case.

Nor can we say that Carrier's recourse to the termination clause of Rule 10(A) was arbitrary. The record shows that Claimant has failed to respond to Carrier's repeated past efforts to obtain his compliance with the rule and that the last of such violations occurred only about six months prior to the instant one.

We find no valid basis for disturbing Carrier's determinations, and the claim must be denied.

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 11th day of March, 1977.