

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { System Federation No. 6, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carman)
{ Chicago, Rock Island & Pacific Railroad Company

Dispute: Claim of Employee:

- (1) That under the terms of the applicable Agreement the Carrier unjustly suspended Carman H. Palmer for 45 days.
- (2) That accordingly, the Carrier be ordered to compensate Carman H. Palmer for 35 days pay in the 45 days of 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.

The record is undisputed as to the facts: the Claimant, a Carman, was scheduled to work the 4:00 p.m. - midnight tour at the Carrier's Spot Repair Building on February 3, 1977. The Claimant neither appeared for work on that day nor was any word received as to his whereabouts. An investigation and hearing revealed that the Claimant knew he would be unable to report for work as early as 2:30 p.m. on February 3, but did not attempt to contact the facility until around 9:00 p.m. that evening; at that time, according to the Claimant, he called the facility but got no answer. His basis for not reporting for work or, according to the Claimant, not attempting to contact the facility was that he "had a vehicle broken down," and was advised by the police to "move it or have it towed off" (both quotes per the transcript of the hearing conducted on February 15, 1977). According to the Claimant, his first opportunity to report came around 9:00 p.m., being otherwise occupied in effecting movement and/or repair of the car. While no word in this regard was received at the facility, it was noted in the record that the layout, noise level and sound level of the telephone chime did not permit detection of a call unless someone was close to the shop's office, where the telephone is located.

The Company relies upon Rule Q as the basis for the Claimant's disciplinary suspension, quoted, in part, as follows:

"Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place without proper authority..."

The Organization contends the Rule Q is a Company Rule unilaterally drawn, that it is in direct conflict with the provisions of Rule 18:

"Absence from Work Without Leave

In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

An employe laying off temporarily shall report during the working hours of his regular shift the day previous to his return, that he will return to service the following day."

The Organization also contends a violation of Rule 3⁴:

"Discipline

No employe shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and his fully authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal. It is understood that 'wage loss' will be less compensation earned in any other employment."

While it is noted that the Claimant lived some 30 miles distant from the Spot Repair facility, we concur in the Carrier's conclusion that it exceeds reason to believe he could not have found both time and opportunity to report his inability to report. By his own statement, he was aware as early as an hour and a half before his reporting time that he would not be able to report. It was neither established nor even contended that the Claimant was enroute to work at the time of the purported difficulty.

Whether or not the telephone was capable of being heard is of no great moment here since the lapse of time from 2:30 to 9:00 p.m. before he attempted to report is unexplicable.

Insofar as the status of Rule Q and Rule 18 is concerned, the Carrier has a clear right to be informed of the status of its work force, and to be so informed timely so as to prepare work schedules. Nothing has been adduced to suggest the Claimant was discriminated against or otherwise required to do anything other than to make a reasonable effort to report his whereabouts.

The Organization has also alleged a lack of fair hearing; nothing is indicated on the record to support such a claim.

While we affirm the Carrier's actions as to discipline, we are not so similarly inclined relative to its reasonableness. There is a well-established line of reasoning not to disturb the Carrier's disciplinary action unless there is some showing that it is excessive, arbitrary or capricious. We do not find that the record, and particularly testimony of the Carrier's own witness in the transcript, to show that the Claimant's absence had a sufficiently adverse impact to warrant a 45-day suspension from the job. Considering his years of service and an apparent lack of prior discipline, we shall reduce the disciplinary suspension to ten (10) working days, nonetheless affirming the Carrier's need to be timely advised as to the status of its work force.

A W A R D

Claim is affirmed to the extent set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasen - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.