

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman-tentative, Larry D. Ewing was unjustly and excessively disciplined (ten days actual suspension plus an entry recorded on his service record) as result of investigation held in the office of the Tool Car Foreman, at result of investigation held in the office of the Tool Car Foreman, at Rainelle, West Virginia, 11:00 a.m., Friday, August 27, 1976. The charges were not proven to be true in violation of Rule 37 of the Shop Crafts Agreement.
2. Accordingly, Ewing is entitled to be reimbursed for all wages lost while serving out said suspension, the 10 days lost to be counted as accumulative days towards his 1977 vacation and the entry be removed from his service record.

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.

This Board is certainly mindful of its appellate responsibility to insure that disciplinary determinations are fair, impartial and commensurate to the gravity of the offense.

After carefully reviewing the facts of this case we do not believe that Carrier acted arbitrarily or capriciously when it suspended claimant for ten (10) days for being absent from duty without permission on August 17, 1976.

Claimant was under a specific obligation to comply with Agreement Rules 21(a) and 22, which are quoted in pertinent part hereinafter:

Rule 21(a) provides, "Employees will not be permitted to lay off from work without first securing permission."

Rule 22 reads, "An employee detained from work on account of sickness or for any other good cause shall notify his foreman promptly."

In the instant case, Claimant should have secured the name of the C.B. - Citizen's Band - operator as a minimal precaution, but more importantly he should have promptly notified his foreman when he arrived at his home at 3:00 A.M. on August 18, 1976.

Carrier is not expected to canvass systematically its employees to ascertain work availability. The Agreement Rules (supra) spell out in unmistakable language the procedures and reporting requirements attendant to absences and layoffs. The burden of compliance falls inexorably upon the employee. Claimant did not obtain the needed permission to lay off from work on his regular assignment. There were no compelling mitigating circumstances to excuse his actions. (See Second Division Award 6057). He thus, by his actions, violated the Agreement.

Moreover, we do not find Carrier's suspension penalty excessive when measured against the seriousness of the infraction and his prior service record.

We will deny the claim.

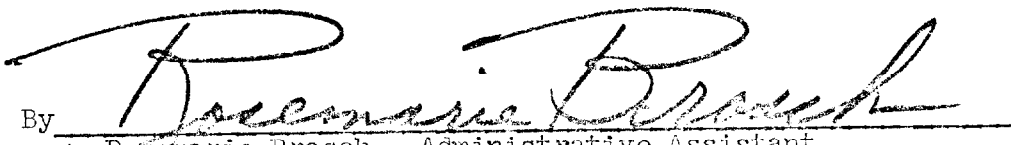
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of February, 1979.