

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employee:

That the St. Louis-San Francisco Railway Company violated the controlling Agreement, particularly Rules 4 and 35, and parts thereof, when on January 30, 1978, Machinist S. D. Johnson was unjustly dismissed from the service of the Carrier at Memphis, Tennessee.

That, accordingly, the St. Louis-San Francisco Railway Company compensate Machinist S. D. Johnson at the pro rata rate of pay for each work day beginning January 30, 1978, until he is reinstated to service. In addition, he shall receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.

Claim is also made for Machinist S. D. Johnson's actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance.

In addition to the money claimed herein, the Carrier shall pay Machinist S. D. Johnson an additional sum of 6% per annum, compounded annually on the anniversary date of said claim, in addition to any other wages earned elsewhere in order that he be made whole.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Claimant, S. D. Johnson, was dismissed from the services of the Carrier on January 30, 1978, following an appropriate hearing conducted January 24, 1978. He was charged with a violation of Rule "P" of the Rules

and failure to punch his time card at the completion of his shift. Rule "P" reads as follows:

"Employers must not absent themselves from their duties, exchange duties with nor substitute others in their place, without proper authority.

The record also indicates that employees at the diesel shop are required to punch in and out at the time clock located in the facility.

On January 6, 1978, the date of the alleged infractions, Claimant was assigned on the 4:00 p.m. - 12:00 midnight shift at the Tennessee Yard Diesel Shops. At approximately 11:45 p.m., the Foreman attempted to contact Mr. Johnson in connection with an inspection report he had made. He was paged for about five minutes to no avail and the Midnight Foreman was sent to locate him. The Foreman testified that he looked in the locker room, in the lunch area, in the dressing area and the rest room. He then reasoned that he could find the Claimant when he punched out. Accordingly, he went to the clock area where he remained until 12:25 a.m., with no success. Accordingly, after appropriate processing, the penalty herein complained of was assessed.

On his behalf, the Claimant testified that on the date in question his work load was such that he was unable to take the allowed twenty-minute lunch break. Toward the end of the shift he was tired, hungry, and out of cigarettes. At about 11:20 p.m., he called a restaurant to order lunch. Sometime after 11:30 p.m., he informed one of his workmen he was going to the restaurant to pick up lunch and cigarettes and would be back shortly. The testimony further indicates that he waited a few minutes at the restaurant for the lunch, returned to the shop, changed clothes, and left the diesel facility. In his words: "I apparently forgot to punch out, but I was here."

The Leadman, a Carrier witness, testified that they had been busy lately and he did not know whether or not Mr. Johnson would have been able to take his lunch break earlier. He indicated the Claimant may have said something about going to the cafe, but he didn't remember any such message. Another Carrier witness, the Midnight Foreman who had searched for the Claimant, indicated he could not swear that Mr. Johnson was not in the locker room at 12:00 p.m. because, after checking at 11:45 p.m., he had stayed at the time clock until 12:25 a.m.

The Carrier witness, on cross examination, admitted that at times he had forgotten to punch the clock and it was possible that the Claimant had had a similar experience.

Based on the foregoing and the entire record, this board cannot make a finding that the Carrier sustained its burden of proof that the rules were transgressed in a fashion that would warrant discharge. It is apparent, however, that the Claimant did not conduct himself in a manner which can be condoned by the Carrier if it is to have an efficient work force so

necessary to fulfill its responsibilities as a common carrier. Some corrective action is warranted. In determining proper corrective discipline, it is appropriate to review the employee's previous record. While, during Claimant's apprenticeship period, he had difficulty keeping up with his lessons, after promotion he has been, generally a good employee. We have oftentimes held that isolated, minor offenses such as that here do not justify a severe action like discharge. Under the circumstances here, any discipline assessed beyond 90 days is excessive. Claimant did work through his regular meal period in Carrier's best interests, and while his absence for the last 20 minutes of his assignment was unexcused, this, in and of itself, certainly is no basis for discharge.

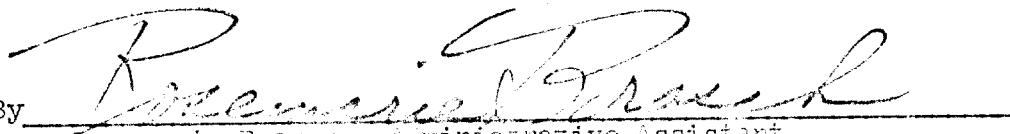
A W A R D

The dismissal of Claimant, J. D. Johnson, shall be modified to a ninety (90) day suspension from service without pay, but with all rights unimpaired.

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 27th day of September, 1979.