

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 99, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer C. C. Curtner was unjustly disciplined for thirty (30) days between June 23, 1977 through July 22, 1977.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to compensate Laborer C. C. Curtner for all time lost during the period from June 23, 1977 through July 22, 1977, and that all benefits for that period be restored.

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 was employed by the Carrier at its Paducah, Kentucky facilities, as a laborer since December, 1976. While he was employed by the Carrier, the Claimant participated in a management training class offered by the Kentucky Fried Chicken enterprise, the Claimant perceived a need to be absent from work from May 18, 1977 through May 23, 1977.

Claimant submitted a letter to the management of the Carrier on May 13, 1977, in which he requested a leave of absence for the May 18 through 23 time period. The letter was forwarded to the Company's Labor Relations Department. On May 13, 1977, the Carrier's labor relations representative responded by issuing a written denial to the Claimant of his request for a leave of absence.

However, Claimant absented himself from employment from his scheduled work days of May 16, 19, 20, 22, and 23, 1977. The 30 day disciplinary suspension was issued to the claimant based upon the unauthorized absence.

The Claimant contends that the denial of the leave of absence, and consequently the 30 day layoff, were improper because the Carrier had a practice of granting leaves of absence upon request. In support of this contention, he cites an absence granted to him later in July of 1977. Further, Claimant contends that the Carrier has not proven that the requested absence would have been an undue burden upon the Employer's operations.

The Carrier cites the provisions of Rule 21 of the Collective Bargaining Agreement which provides for leaves of absence only when given by the Employer. They contend that the granting of such leave of absence is discretionary with the Carrier.

The Carrier argues that the record is clear that the request of Claimant was not granted, but rather was denied. Further they submit that the undenied absence by the Claimant was a clear violation of his duty to report for work.

Further, the Carrier denies that it had any practice of routinely granting requests for leaves of absence. Concerning the July, 1977 absence by the Claimant, the Carrier argues that this was concurrent with the annual shutdown for vacation purposes. They contend that this cannot amount to a practice regarding leave of absences.

Finally, the Carrier cites numerous decisions by other arbitrators to the effect that a disciplinary layoff is an appropriate response to unwarranted absenteeism. They contend that the 30 day layoff is proper under the circumstances.

It is a basic concept in arbitral law that a leave of absence is not a matter of absolute right in the employee. The very nature of a leave of absence is that the Employer grants the employee such leave. The Employer's discretion in either granting or denying leaves or absence have been upheld in numerous cases. Therefore, the Carrier may deny a request for leave of absence without being required to justify its denial.

In the instant case, it is undisputed that the Employer denied the Claimant's request for a leave of absence. Further, it is undisputed that the Claimant absented himself from work in spite of this denial. Clearly the conduct of the Claimant justified disciplinary action by the Employer for such overt failure to report for work.

The record is devoid of any substantial evidence that the Employer had a past practice of automatically granting leaves of absence upon requests. Therefore, the Claimant has submitted no basis for justifying his absence from work for the five days in May. Based upon these circumstances, the Employer was justified in suspending the Claimant for his willful failure to report to work as required.

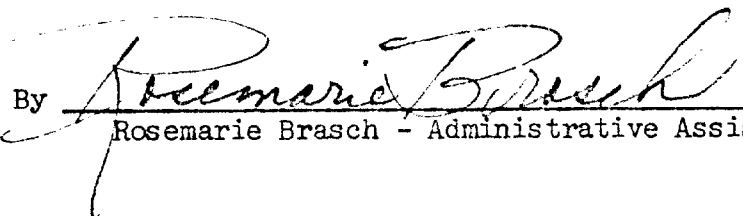
A W A R D

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 14th day of November 1979.