

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. L. J. Reinowski, Hostler helper, Havre, Montana, was unfairly dealt with when suspended for a period of 30 days of service from the Burlington Northern, Inc. on February 15, 1978 to March 16, 1978, inclusive.
2. That, accordingly, the Burlington Northern, Inc. be ordered to compensate Mr. L. J. Reinowski for payment of all time lost at the pro rata rate, including fringe benefits, and the mark removed from his 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 employees 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 Claimant was assigned as a hostler helper at the Carrier's Havre, Montana Diesel Shop. His hours of assignment were 3:00 P.M. to 11:00 P.M. This claim involves the Carrier's suspension of Claimant for thirty days as the result of an incident which occurred on December 24, 1977. On that date the Claimant did not arrive at work until 5:00 P.M., two hours subsequent to the starting time of his assignment.

By notice dated December 29, 1977, the Claimant was directed to attend an investigation on the charge of alleged failure to protect his assignment as a hostler helper, absenting himself without authority, and failure to perform his duties as a laborer as directed by his supervisor on December 24, 1977.

The investigation was held and the Claimant was found to be guilty of the charges. A suspension of thirty days was imposed as discipline by the Carrier and the Organization has progressed the claim to this level.

It is the position of the Organization that the Carrier unfairly suspended Claimant from service since his lateness was due to his being unavoidably detained as a result of his car being stuck in the snow. It is the further position of the Organization that the Claimant received proper authority to be excused from work on the date in question when he became ill.

It is the position of the Carrier that it did not act arbitrarily or capriciously when it imposed the discipline on Claimant. It is the further position of the Carrier that the Claimant was two hours late for work, that he did not have permission to be late, and that he did not advise the Carrier prior to the scheduled starting time that he would be late. Therefore, it is the position of the Carrier that the Claimant was in violation of Carrier's Rule 665 which provides:

"Employees must report to duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

The credible evidence of record supports the position of the Carrier. When the Claimant arrived at work, at approximately 5:00 P.M., he was assigned the job of washing air boxes. Since he had not been available to fill his own assignment of hostler helper, another employee had been called to fill that position on an overtime basis. When the Claimant's foreman checked on his progress in completing the task of washing air boxes he found that insufficient headway had been made by the Claimant. At this time, a discussion between the Claimant and his foreman took place. The gist of their exchange reflects that the Claimant was displeased with his assignment of washing air boxes and that he did not particularly like that job. It is true, that the Claimant alleged that he was sick at the time that he turned in his time card and left the Carrier's premises. However, the following testimony supports the Carrier's charge that the Claimant absented himself from work without permission and failed to perform his duties as a laborer:

"Q. (to Claimant) Mr. Reinowski, when you did get to work at 5 o'clock, why did you refuse to wash air boxes?

A. I didn't refuse to wash them, I started doing the job and I got sick, I went up to Mr. Nord (Foreman) and I told him I was going home. And he said that I didn't look very sick so I turned in my time card.

Q. Did you state to Mr. Nord that you didn't know why you should have to wash air boxes?

A. Yes, but I think that was before I told him I was sick.

Q. (to Carrier's Foreman) Mr. Nord, would you tell me again what Mr. Reinowski said to you when you assigned him to do his job?

A. Well, he didn't say anything when I first assigned him the job, but after I checked on his progress and it was almost nil a little bit later when I told him he better get going, I wanted the job done, he came over to me at 4 stall office there and wanted to know why he should do air boxes. I explained to him that somebody was already protecting his job, because he was late, and that there were jobs that had to be done and somebody had to do it, and I had all my other laborers assigned to different jobs at this time and he happened to be there, and he was going to do the job. Then he stated that he was sick. I just commented he didn't look very sick to me, because he didn't. Then he said well, he didn't want to do air boxes and he was going to go home, he turned in his slip and went home."

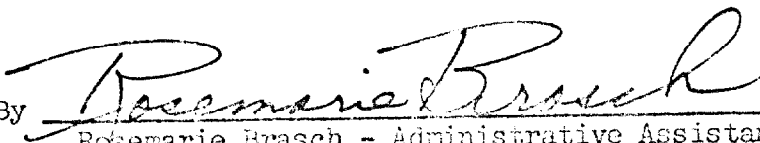
The totality of the evidence in this case supports a finding that the Claimant did not comply with the rules of the Carrier since he failed to take the proper steps to notify the Carrier that he would arrive late to his work location. The evidence further supports a finding that the Claimant did not attend to his duties on the date in question.

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 28th day of November, 1979.