

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

Parties to Dispute: { Sheet Metal Workers' International Association
{
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. Carrier did not present evidence to prove Sheet Metal Worker Metts guilty as charged. Therefore, that the Carrier be ordered to pay claimant eight (8) hours pay at pro rata rate for August 29, 30 and 31, 1977.
2. To allow August 29, 30 and 31, 1977, as qualifying time for vacation purpose.
3. Pay claimant eight (8) hours at applicable overtime rate for August 29 and 30, 1977, to which he was eligible to work.

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.

Claimant was suspended for leaving his job without permission at about 11:00 A.M. on the day in question.

Claimant testified that he told his Foreman he was going to leave early that day and "I told him I probably wouldn't be in the next day, that's why I wanted to notify him because I could not reach him by phone". (Claimant did not have a phone at the time of the incident.)

Mr. Lewis, a machinist, testified he heard Claimant tell his foreman he was going to leave early. He elaborated as follows:

"Q. ... did (Foreman) reply and ask him how long or did did he say anything that he was going to be there or did (Foreman) even say anything to him?

A. I don't remember exact words that was said, it seemed to me that he asked (Claimant) how long he was going to be."

Mr. Lewis, in answer to a question from the Hearing Officer, stated that Claimant asked him to tell the Foreman he had to leave.

Mr. Miller, a sheet metal worker, testified that Claimant asked him to inform the Foreman "to mark him out, he was going home", but that he (Miller) did not relay the message to the Foreman. When questioned as to whether the Foreman asked him whether Claimant "was gone or had gone", Miller answered in the affirmative and also that the Foreman then said he was going to mark Claimant out. The Foreman testified he did not remember saying he was going to mark Claimant out. The following colloquy between Claimant's representative and the Foreman bears on this point:

"Q. Mr. Pollard, did you go to Mr. Miller and ask him if (Claimant) ... had already gone?

A. I believe I did when I couldn't find him.

Q. Well, then how did you know he was already gone ...? What made you think that ...

A. Not already gone, I asked him if he had gone."

Claimant testified that another employee, Mr. Moody, was present at the time he asked Miller to inform the Foreman he was going home, and that he asked either one to tell the Foreman. The record discloses that Mr. Moody clocked out sick at about 10:30.

Carrier's position is that it was not the practice for employees to leave their job without permission and that it was Claimant's responsibility to have the Foreman's permission to take time off. Carrier adds that no witness testified hearing Claimant receive permission to be off.

Mr. Lewis testified that he had been asked in the past by other employees to let the Foreman know that they were going to leave work early and that in such cases, the Foreman marked the man off.

The Foreman's testimony corroborated by that of another supervisor, indicates a practice by him to mark employees' time cards when they report off early and do not punch their time card, or to correct the time card the next day when the employee's actual departure time was ascertained.

Based on the record, we find that it was an accepted practice for foremen to mark out employees' cards when leaving early, even when based on the statements of fellow employees. Claimant's testimony that he told the Foreman he was going

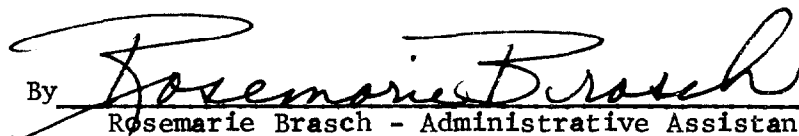
to leave early is confirmed by witnesses. The tenor of the Foreman's responses, also supported by witnesses, strongly suggests that he did not deny Claimant permission to leave early, so that Claimant could reasonably conclude that he had permission. Accordingly, we shall sustain the claim.

A W A R D

Claim sustained.

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 6th day of August, 1980.