

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute:

(International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
(
(National Railroad Passenger Corporation

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DEC 29 1980

Dispute: Claim of Employees:

P. E. LaCOSSE

1. That the Carrier violated Rule 23 of the Current Agreement when on December 5, 1978 Boilermaker E. J. Henderson was assessed a fifteen (15) day suspension from service and a notation reflecting this discipline was made a part of his service record.
2. That accordingly, the Carrier be ordered to remove the entry from Boilermaker Henderson's service record and compensate him for all lost time.

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.

At the time of the suspension, the claimant had been employed as a Boilermaker for approximately three years.

On November 24, 1978, Claimant was notified to appear for a formal investigation to be held November 27, 1978. The charges to be investigated were as follows:

"Violation of The National Railroad Passenger Corporation Rules of Conduct, Rule 'K' in that you reported late for duty on the following dates:

Wednesday, November 8, 1978 - 35 Minutes Late
Monday, November 13, 1978 - 30 Minutes Late"

Rule K reads as follows:

"Employees must report for duty at the designated time and

"place, attend to their duties during the hours prescribed and comply with instruction from their supervisor."

The investigation was held and as a result carrier suspended the claimant for a period of 15 days.

In reviewing the record, the Board finds there is substantial evidence to uphold the carrier's finding of guilt. The claimant readily admitted being late on both dates in question. He also readily admitted that he had been made aware of at least one number which he was to call when not being able to report for work.

The claimant's defense was that one day of the days in question he had a flat tire which prevented him from being on time. On the other day, he was late because his daughter had struck her head at home and he was concerned about her welfare. However, there is nothing in the record that would indicate the claimant was prevented from at least calling the carrier.

On November 8, the claimant indicated, when he had the flat tire he had to walk home to contact his brother for assistance. This was at 25 minutes before his starting time. He also admits he has a telephone at his residence. The claimant had nothing of relevance to say when questioned as to why he didn't call the carrier to notify them he was not able to report for duty on time. He testified that on November 13, by the time he realized he was going to be late it was already 5 minutes past his starting time. He then proceeded directly to work without notifying carrier of his tardiness.

We do not find the claimant's defense persuasive. There is no reason found in this record to excuse the claimant from his obligation to report for work on time or to notify the carrier otherwise.

Regarding the quantum of discipline it is the conclusion of the Board that, in view of the claimant's past record, a 15-day suspension cannot be considered arbitrary or capricious. The claimant had previously been assessed a one-day suspension and a 15-day suspension for Rule "K" violations in addition to having had been dismissed for a Rule "K" violation on June 15, 1978. In view of this record, we are compelled to say a 15-day suspension is quite lenient.

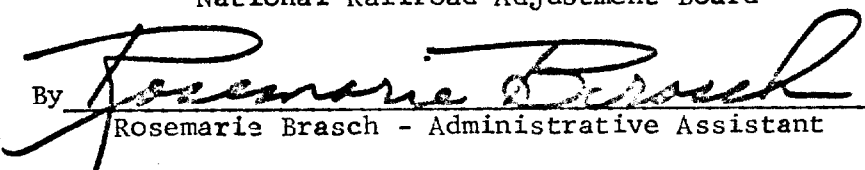
A W A R D

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 17th day of December, 1980.