

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 Firemen & Oilers  
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{  
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the Current and Controlling Agreement, Laborer J. H. Sharpe, was unjustly dismissed from service of the Seaboard Coast Line Railroad Company on June 13, 1978, after a formal investigation which was held in the office of Mr. W. E. Satterwhite, Superintendent, on June 2, 1978.
2. That accordingly J. H. Sharpe, Laborer, be restored to his regular assignment at Savannah Shops with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all time lost, effective June 13, 1978.

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.

The claimant was employed as a laborer with seven years seniority at the time of dismissal.

On May 30, 1978, carrier directed the claimant to attend an investigation to be held June 2 regarding his failure to properly report an alleged injury and insubordination in respect to his failure to comply with instruction of his supervisor. Specifically, he was charged with violating Rule 35 of the Agreement and Rules 12 and 29 of the Rules and Regulations of the mechanical department.

Rule 35 reads in part:

"Employees injured while at work are required to make a detailed written report of the circumstances of the accident just as soon as they are able to do so after receiving medical attention."

Rule 12 states:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, willful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal." (Emphasis Added)

Rule 29 states:

"Any employee receiving an injury will report same to his foreman as soon as he is able to do so."

The transcript reveals that on May 19, 1978, at approximately 11:00 p.m. claimant called one of his foremen, Mr. Bradham, and marked off sick because he had been injured while on duty the previous night. The charges are in connection with claimant's alleged failure to report this injury as required by the rules and his alleged failure to report the injury as instructed by a Foreman and an Assistant Master Mechanic.

Regarding the charges, the carrier argues there is more than substantial evidence. They point to testimony from Foremen Bradham, LeMoyne and Kirby, Assistant Master Mechanic Davis and the claimant himself.

Foreman Bradham testified that when claimant called in on May 19 to report off he specifically instructed claimant to report to the diesel shop the following morning to make a written report of the injury and if necessary to see the company doctor. Foreman Bradham further testified that to his knowledge claimant did not report the injury as instructed. Mr. C. F. LeMoyne, the relief foreman on duty the date of the alleged injury, testified the claimant had not mentioned anything to him about an injury. Mr. Kirby, the claimant's regular foreman although not on duty May 19, testified the claimant never reported the injury to him. Assistant Master Mechanic J. C. Davis testified that as late as May 23 he further instructed claimant to report the injury and that he still did not report the injury in writing.

In addition to the testimony above, which is sufficient to support the charges, the Board also notes clear admissions on the claimant's part that he failed to comply with Rule 35 by making a written report of the injury, that he failed to comply with direct instructions of carrier supervisors to report the injury and that he failed to report the injury to his foreman.

Regarding the quantum of discipline, the Board notes its proper role. It is not the Board's function to substitute its judgment for that of the carrier unless it can be shown that the discipline is so unreasonable as to be arbitrary or capricious. In view of the claimant's past record, the Board cannot say that dismissal is unreasonable. The claimant had been suspended once previously for failing to comply with instructions and twice before for misconduct in connection with sleeping on duty. The Board is not convinced the claimant deserves another chance.

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Award No. 8561  
Docket No. 8493  
2-SCL-FO-'81

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of January, 1981.