

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling Agreement when they assessed discipline following formal investigation held on Carman D. M. Murray at St. Joseph, Missouri, November 29, 1978.
2. That the Missouri Pacific Railroad Company be ordered to clear Carman D. M. Murray's record as per Rule 32 (d) of the controlling Agreement.

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.

This dispute arises out of two (2) instances where the Claimant, a Carman, purportedly or in fact **failed to** contact appropriate supervision to gain permission to lay-off. One such incident occurred on September 30, 1978. As a result, he was given specific instructions to either call the supervisor at home, or to call a specific number at the Carrier collect. On October 19, 1978, the Claimant did so and was granted such permission. On October 20, 1978, the Claimant was again absent but the Carrier contends no call was made, although the Claimant contends he made such call and "talked to a girl". An investigation was held the result of which was assessment of a 30-day deferred suspension for the September 30 and October 20 incidents. Given no recurrence of such absenteeism within a year, the deferred suspension would not be enforced.

This is a case of credibility, but which could be straight-forwardly decided on the basis of records: since it was a long distance call, if the Claimant made such a call at his own expense, it would show up on his telephone bill (the Claimant apparently made no assertion it was executed from a telephone booth); if the call was made collect, it would show up on the Carrier's telephone bill since, per the Claimant's testimony, the call was completed. The Claimant made no assertion that the call was collect and, given the Carrier's contention it was not made at all, a showing by the Claimant of such record would have disposed of

the matter. No such proof was apparently offered. Since the Claimant had made the call of the previous day, it was evident he understood his obligation to do so. And, given the aforesaid facts, it is clear that the circumstances favor the Carrier's version of events; its right to discipline flows from such a conclusion.

As to the extent of the discipline, we find no basis to disturb the Carrier's action. In so saying, however, we do not imply foreclosure of the Claimant's right to grieve such discipline if it were to be imposed (or if it was imposed) during the succeeding year of service.

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 6th day of May, 1981.