

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8956
Docket No. 9133
2-MP-CM-'82

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup 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 unjustly disciplined Carman R. B. Reyna, July 25, 1979 by assessing him 60 days actual suspension.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman Reyna from July 25, 1979 until his return to service.

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, Mr. R. B. Reyna, is a Carman employed by the Missouri Pacific Railroad Company. At the time of the instant case Claimant was working the 7:00 A.M. to 3:00 P.M. shift at the Carrier's Freeport, Texas facility.

Claimant was assessed a 60 day actual suspension to run from July 26, 1979 to September 23, 1979 after a formal investigation which was held on August 3, 1979. This investigation dealt with the following Carrier charge, as issued to Claimant by letter on July 25, 1979:

"... your alleged failure to comply with instructions of Lead Carman C. B. Segina and failure to properly perform duties of your assignment by not supplying Engines 1154, 1148 and 1193, and failure to properly protect your assignment as Carman on the 7:00 A.M. to 3:00 P.M. shift, July 25, 1979, by absenting yourself at approximately 8:00 A.M. without proper authority."

Claimant was suspended the day after the alleged charge, prior to the investigation, because Carrier invoked Rule 32 (a) of the controlling Agreement which provides that "in proper cases" an employee may be held out of service pending an investigation which must be held promptly. The Board finds that the Carrier did not contravene its authority in applying, in this case, Rule 32 (a).

The main issues of substance in the instant case are twofold: (1) is there substantial evidence that Claimant broke Rule 17 of the Agreement, and (2) if such be the case, whether the discipline assessed was excessive.

Rule 17 of the Agreement states the following:

"Employees shall not lay off, without first obtaining permission from their foreman to do so, except in cases of sickness or other good causes of which the foreman shall be promptly advised."

A complete review of the record shows that Claimant did leave the job on or about 8:00 A.M. on July 25, 1979, that he did this without the explicit permission of the Head Carman, that the Assistant General Car Inspector was not apprised of the alleged reason for the Claimant's departure from work on that day until the day after, that the existence of the alleged reason for leaving i.e. illness, has never been proven, and lastly, that testimony at hearing suggests that Claimant did not want to work on the morning of July 25, 1979 because it was raining. There may well have been a relationship between an illness Claimant felt and the fact that he did not want, and/or had good reason not to want, to go into the rain on the day in question. This is hypothetically possible. But this remains, on the record, unproven.

It has been established in many prior awards by this Board that it does not presume to substitute its judgment in discipline cases for that of the Carrier (See recent Second Division awards 8308, 8322, 8326) when charges are proven, and there is substantial evidence in this case to support the fact that Rule 17 of the Agreement was broken. Nevertheless, the Board has justifiably reduced a penalty if it was considered to be excessive in view of the facts of the case before it and in view of the principle of progressive discipline.

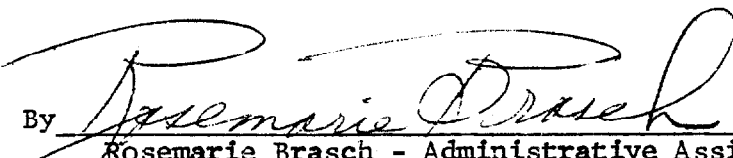
In the present instance, the Claimant has no past record of occupational malfeasance with the instant Carrier. On the contrary, he had a good work record for the some three and a half years he had been employed by the Missouri Pacific Railroad Company prior to this incident.

A W A R D

Claimant's actual suspension shall be reduced from 60 to 40 days.

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 3rd day of March, 1982.