

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

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
( Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement and the Burlington Northern schedule of rules, the Carrier unjustly censured and suspended Machinist J. A. Jamieson from service for a period of five working days from September 15, 1979 through September 19, 1979, inclusive.
2. That, accordingly, the Carrier rescind its censure of Machinist Jamieson and compensate him for all wages lost as a result of said suspension.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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. Jamieson, was notified by letter dated August 9, 1979 to appear for an investigation on August 14, 1979. The purpose was to determine his responsibility in connection with his alleged failure to protect his assignment as machinist by absenting himself without authority on August 4, 1979. The investigation was held as scheduled and following that properly conducted hearing, the penalty herein complained of was assessed. There is no controversy with respect to the facts in this case. On the day in question Claimant, for personal reasons, undertook a trip from his domicile in Havre, Montana to Billings, Montana. The distance round trip is approximately 540 miles. On his return trip he testified that his car broke down and he had some difficulty in getting to a telephone to call his supervisor. He finally called his supervisor from Ray, Montana, a considerable distance from work, at approximately 10:50 P.M. to request permission to be absent or late to work. His shift started at 11:00 P.M. and he estimated that he could be at work at 3:00 A.M. The supervisor responded that if he couldn't make it before 3:00 A.M. there was no use coming to work. He actually arrived in the work area at 4:00 A.M., but did not appear for work. The Carrier called another employee to fulfill his assignment. Mr. Jamieson admitted that he was absent from work and the supervisor did not grant him

permission. The rule under the circumstances is clear. It reads in pertinent part:

"... Employees must not absent themselves from duty, exchange duties with, or substitute others in their place without proper authority."

It is clear from the record that Claimant violated the rule.

The Organization defends Mr. Jamieson by claiming that he should have been granted authority by his supervisor since the break down constituted an event beyond his control and, therefore, he was constructively in compliance with the rule. That argument constitutes a request for lenient application of the rule. However, meritorious that request may be, it is a ~~right~~ reserved to the Carrier, not this Board. Absent clear and credible evidence that the Carrier misused its authority, we are constrained from modification of the contract language. A prudent individual undertaking a trip of such length would have allowed for exigencies and sought permission in advance. While Claimant may feel that the Carrier's interpretation was very strict, it was within its legal rights to so determine. Accordingly, this Board must uphold that decision.

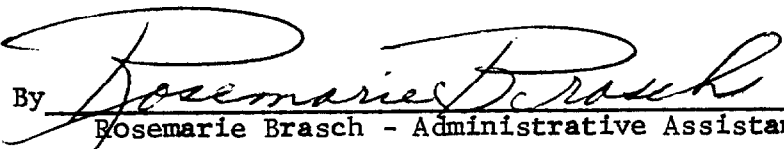
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.