

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Laborer Landy Tharpe, Jr., was unjustly suspended from service of the Seaboard Coast Line Railroad Company on March 27, 1980 and subsequently dismissed on April 17, 1980, after a formal investigation was held on March 27, 1980.
2. That accordingly Laborer Landy Tharpe, Jr., be restored to his regular assignment at Uceta Shop, Tampa, Florida, compensated for all lost time, vacation, health and welfare, hospital and life insurance and dental insurance premiums be paid effective March 27, 1980, (date of suspension) and the payment of 6% interest rate be added thereto.

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. L. Tharpe, Jr. is employed as a laborer for the Seaboard Coast Line Railroad Company at Uceta Shop, Tampa, Florida with seniority date of November 22, 1974. At the time of the instant claim Mr. Tharpe held a Wednesday through Sunday assignment, from 7:30 A.M. to 3:30 P.M. Monday and Tuesday were his rest days. On March 24, 1980 Claimant received notice to appear for formal investigation on March 27, 1980 at Carrier's Tampa Division Office, Tampa, Florida. The charge was that Claimant had left his assignment and duties on March 21, 1980 without permission from proper authority in violation of Rule 26 of the Seaboard Coast Line Company's Rules and Regulations of the Mechanical Department, and that in partial contravention of Rule 12 of the same Rules and Regulations he had been insubordinate to foremen D. M. Moriarty and T. H. Dickson on that same date. After a formal investigation was held on March 27, 1980 Claimant was dismissed on April 17, 1980. After appealing the decision of Carrier through all appropriate steps on property, instant case is now before the Second Division of the National Railroad Adjustment Board.

Rule 26 reads as follows:

"Employees must not absent themselves from their duty without permission from the proper authority."

Rule 12 reads (in pertinent part) as follows:

"... insubordination ... will subject the offender to summary dismissal."

The facts of the case, as per the transcript of the investigation and accompanying exhibits, show the following: Claimant reported to work on time on March 21, 1980; he asked permission from Engine House Foreman H. M. Moriarty to leave premises at approximately 11:15 A.M. and was told he could obtain this permission only from General Foreman W. L. McGowan; McGowan left for lunch between 11:30 and 11:45 A.M.; Claimant then approached Department Foreman T. H. Dickson between 12:25 and 12:30 P.M. for permission to leave premises and was again told that this permission could only be granted by Mr. McGowan; McGowan had not yet returned from lunch; Claimant left property at 12:31 P.M. to attend religious services at 1:00 P.M. Extenuating circumstances related to this case also show that Carrier Bulletin of February 26, 1980, which was posted, stated (in part) that: "... employees should not leave their jobs without permission from their foreman ..." (emphasis added) without stating that this permission must be obtained from the general foreman which was an informal policy which was in effect at the Uceta Shop for less than a week prior to this incident; in addition, Claimant had received permission from another Engine House Foreman in the past to leave the premises during his shift in order to attend religious services.

There is no question in the mind of the Board that Claimant was in de facto violation of Rule 26 of Carrier's Rules and Regulations. At the same time the circumstances of the case indicate that Claimant had made a sincere effort to comply de jure with this Rule by seeking permission to leave premises for a personal reason for which he had been granted permission to leave in the past. Furthermore, Claimant experienced certain potential logistical difficulties in finding the correct person to grant him this permission because of the time-frame of events and Claimant's personal requirement of having to be at the place of worship at 1:00 P.M. This does not justify Claimant's own solution of self-help, in this instance, but it does in the mind of the Board entitle Claimant to an additional chance to prove his worth as an employee to Carrier. The Claimant is to be reinstated to his former position as of the date of this award without back pay but with his seniority rights unimpaired as per Rule 28 of the Agreement between the parties.

#### A W A R D

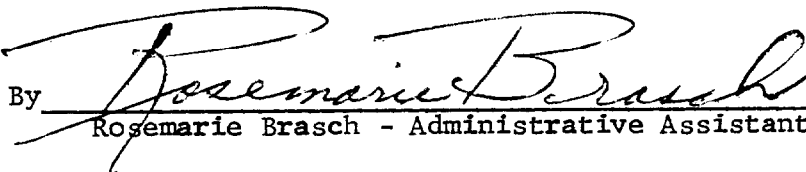
Claim sustained to the extent indicated in the findings.

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Award No. 9048  
Docket No. 9149  
2-SCL-FO-'82

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.