

The Second Division consisted of the regular members and in addition Referee Thomas V. Bender when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{ Western Fruit Express Company

Dispute: Claim of Employee:

- 1. That the Western Fruit Express Company unjustly suspended Carman W. H. Wilmont, Spokane, Washington from service on October 10, 1979 without the benefit of a hearing.
- 2. That the Western Fruit Express Company be ordered to compensate claimant for eight (8) hours at his pro rata rate for October 10, 1979.

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 is employed as a carman by Western Fruit Express at its repair facility at Hillyard Yard, Spokane, Washington. On October 8, 1979 the Claimant's glasses were broken. Because of this he could not work and so advised his supervisor. The Claimant stated that he would return when his glasses were fixed or he had secured a new pair. On October 10, 1979 the Claimant presented himself for duty. The carrier refused to allow him to work citing the following work rule:

"NOTICE

EFFECTIVE IMMEDIATELY any one who is absent from work must report in to the Shop Superintendent's office during the shift which you are absent.

Any one who does not call in will not be allowed to work the following day.

Employee returning to work shall report during the working hours of their regular shift the day previous to their return.

Dated this 9th day of July, 1979."

The Claimant could not see that he had violated any rule. He did not believe that any farsighted company official would actually enforce the bulletin quoted, supra. The company turned a deaf ear and jaundiced eye to the claimant's pleas. Based on these facts, this spectacle is presented for decision.

Two points must be addressed.

1. The July 19, 1979 Bulletin. Any reasonable business person promulgates certain rules which must be observed in order to insure a safe, efficient and profitable operation. And, unless such rules are violative of the collectively bargained labor agreement the rule must be given effect by a referee. We find no rule that has been violated by the carrier's bulletin. This bulletin represents nothing more than Western Fruit Express' attempt to plan, balance and order its manpower. This is management's job and if done well results in greater security and predictability for the employes. Second Division Award No. 6294 (Referee Bergman).

2. Was the Carrier's action here "discipline" as that term is understood in the railroad industry?

We find that the Claimant in this matter was not disciplined. When the Claimant did not call in on October 9, 1979 and advise his supervisor that he would be available for duty on October 10, 1979 the carrier called in another employe. A similar situation was presented in Fourth Division Award No. 2598 (Referee Weston).

In that case Referee Weston stated, inter alia:

"Rule 37, a discipline provision, is not apposite since this is not a discipline case. It is undisputed that Claimant arrived late for work on the day in question. His excuse was that he had overslept. When he did not show up at his position's scheduled starting time, Carrier was not in a reasonable position to know whether he would arrive in five or thirty minutes or not at all. Under the circumstances, Carrier was not under an obligation to keep his position open for him on that day, particularly in the busy Lamberts Point area where continuous around-the-clock operations are maintained."

We find Referee Weston's analysis dispositive of the discipline issue in the instant case. See also Second Division Award 7384 (Referee Marx). The Carrier thought it had a position to fill on October 10, 1979. It filled that position. Had the Claimant simply made a call on October 9th, he would have been at work on the 10th. All the Claimant had to do was follow a reasonable manning rule. Moreover, as previously noted, the reason the Claimant did not work on October 10, 1979 was because he had been replaced. Replaced because the Carrier did not know if he would be able to return to work. There are no punitive overtones present. A man with twenty-four (24) years service should know the rules and should understand what is likely to happen when a rule is ignored.

During the course of the argument of this matter the Organization representative presented Second Division Award No. 8698 (Referee Vernon) in support of the employe's claim. This case is distinguishable from the **instant case**. Referee Vernon specifically found that the Carrier's actions in that case were disciplinary in nature. No such finding is possible given the facts in this record.

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 16th day of June, 1982.