

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employee:

1. That under the current Agreement, Carman V. J. Montalbano, Mays Yard, New Orleans, La., was unjustly suspended from the service of the Illinois Central Gulf Railroad for a period of ninety (90) days commencing on September 5, 1979 and continuing through December 3, 1979.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to:
 - (a) Compensate Carman Montalbano for all time lost beginning on September 5, 1979 up to and including December 3, 1979.
 - (b) Compensate Carman Montalbano for all over-time he would have been entitled to during the ninety (90) day suspension beginning September 5, 1979 through and including December 3, 1979.
 - (c) Compensate Carman Montalbano for any and all other benefits he would have been entitled to as a condition of employment during the above unjust ninety (90) day 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 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, V. J. Montalbano, is a carman who works out of Mays Yard in New Orleans, Louisiana. On August 4, 1979, Claimant told his foreman, C. N. Brown, that he needed time off because of his wife's health. Mr. Brown asked Claimant how much time he needed and Claimant stated that he did not know. Mr. Montalbano presented a written request for leave of absence, but did not specify a time period. Such request was not approved. Rule 22 is applicable and provides:

"Rule 22. When the requirements of the service will permit, employees, on written request, will be granted leave of

absence for a limited time, with privilege of renewal. An employee absent on leave who engages in other employment will lose his seniority unless special provision shall have been made in writing therefor with the proper official and committee representing his craft.

On August 5, 1979 Claimant called and informed his foreman that he was sick and could not come to work. Foreman Brown allowed Claimant to be off August 5, because of his alleged illness. On August 6, Mr. Montalbano called Mr. Brown and stated that he would be off for one week. Mr. Brown told the Claimant that he expected him to protect his job. Foreman Brown never gave Claimant permission to be off because the work load was extremely heavy at the time, three employes had just been furloughed, and the month of August is a prime vacation month.

The Claimant's seniority date did not permit him to take his vacation during August. There is a Company policy which states that an employe may, with permission, take his vacation at an unauthorized time if any emergency situation exists. In considering the employe's request, the Company noted that in 1976, 1977 and 1978 Mr. Montalbano had some form of an emergency for which he was granted time off during the summer. The foreman denied the claimant's request because of the burden it would put on the other workers and the questionability of his emergency.

Mr. Montalbano absented himself without permission on August 6, 7, 8, 9, and 12, 1979. He returned to work and on August 15, 1979 was notified to attend a formal investigation in regard to his days absent without permission. As a result of the facts revealed at the formal investigation conducted on August 24, 1979 he was suspended for 90 days.

We address each of the Organization's contentions in challenging the discipline assessed.

1. Claimant did request, in writing, a leave of absence as required under Rule 22 of the current agreement.

Claimant's right to a leave was not absolute. Rather, it was subject to "the requirements of the service". Carrier needed Claimant to protect the service.

2. At no time did General Car Foreman Brown actually deny Claimant permission to be absent on the days in question.

Mr. Brown gave Claimant no justification for believing that his request was granted.

3. General Car Foreman Brown admits that Claimant did comply with Rule 22 in requesting a leave of absence.

Again, compliance with Rule 22 does not mandate granting of the request for leave.

4. Claimant was denied a fair hearing due to the interruptions of the hearing officer during the Organization's cross-examination and the

hearing officer's role as the accuser, judge, and jury.

The record will not support such conclusion. The hearing was fair and impartial, and Claimant was given ample opportunity to develop his defense. Further, nothing in the agreement proscribes a single official preferring the charges, conducting the investigation and assessing discipline. The test is not who handled what responsibility for Carrier. The test is whether or not all functions were handled with fairness to the accused employe. Such test was met in Mr. Montalbano's case.

5. The Master Mechanic had broadened the charges against the Claimant by stating in the dismissal letter that Claimant was also insubordinate.

Letter of Discipline read:

"At the investigation which was held in the Conference Room of the Division Office Building, New Orleans, La., at 10:00 AM, Friday, August 24, 1979, it was determined that you did absent yourself without proper authority from your job assignment of 7:00 AM to 3:00 PM, working as Car Inspector in Mays Yard, New Orleans, La., on August 6, 7, 8, 9, and 12 of 1979.

Because you were found guilty of these charges and because of the seriousness of the charges you are assessed discipline in the amount of 90 days. Your discipline will begin at the end of your tour of duty on September 4, 1979 and will end on December 3, 1979. You may return to your regular tour of duty on December 4, 1979. Leniency was shown you in this case inasmuch as the charges you were found guilty of is a form of insubordination which is a dismissal offense.

Your good record was favorably considered in determining the amount of discipline assessed you."

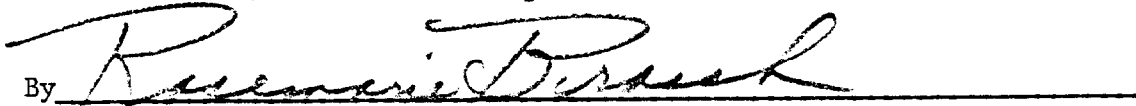
The Organization's point is without merit.

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 22nd day of July, 1982.