

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
 { Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employees:

1. Under the current agreement, Firemen & Oiler, Mr. M. A. Kifayatullah, in Car Department for the Chicago, Rock Island and Pacific Railroad Company in Kansas City, Kansas was unjustly suspended from Carrier's service on date of March 28, 1979.
2. That accordingly, Firemen & Oiler, M. A. Kifayatullah be made whole, restored to Carrier's service with all seniority rights, vacation rights, Holiday, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensate for all wages lost from date suspended, March 28, 1979, plus 6% interest on all such lost wages, also reimbursement for all losses sustained account loss of coverage under health, welfare and life insurance agreements during time held out of 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 were given due notice of hearing thereon.

Claimant was classified as a Laborer (F&O) and employed at the Carrier's facility at Kansas City, Kansas when on March 15, 1979 the events in dispute here occurred. On that date, the Claimant was observed by two supervisors departing the facility in his personal vehicle; such departure was during his assigned regular hours of duty of 4:00 p.m. to midnight. It was subsequently determined that he had not obtained permission to leave his work assignment or the area. The Claimant was observed returning to the area at about 6:20 p.m. that same evening. The following day, the Claimant's time card for the preceding day was reviewed and it was found that he had recorded duty for the full eight-hour shift. A Notice of Investigation and, after a postponement, the hearing was convened over the three-day period of March 23, 27 and 28, 1979. As a result, it was determined that his absence was without authorization and a violation of Rule Q and his falsification of the time was violative of Rule N. According to the Carrier, a review of his four years' service revealed excessive absenteeism. The Claimant was discharged from service on April 6, 1979.

The Organization raises, as its principle defense, procedural questions related to the manner in which the hearing was held; essentially, it contends that the Claimant was denied a fair and full hearing in the manner it was conducted and on the basis of the denial of the Claimant's wife to testify in his behalf. On review of the transcript, while it can be said that the hearing may have lacked precision in its decorum, we are satisfied that the Claimant was afforded a sufficient opportunity to present his defense. As to the contribution his wife might have made to the record, the Claimant was charged with leaving his duty station and the facility without permission and for falsifying his time card. Granting that his wife might have explained his whereabouts in conjunction with the first charge, we would still be faced with making a choice between opposing and contradictory testimony. In sum, her contribution would not seemingly change that aspect of this case. The record was then closed. As we have already observed, we conclude the hearing lacked precision, but are mindful that its execution was complicated by non-productive procedural objections.

The burden here is on the Carrier to demonstrate that it met its obligation to fully develop its basis for concluding that the Claimant violated the Rules as asserted. We are satisfied that it did. When such conclusion is laid alongside the Claimant's prior record of absenteeism and discipline in the short period since his hire -- on November 14, 1978 -- four months earlier, we find no basis to disturb the Carrier's decision to remove.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of August, 1982.