

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation (Amtrak) erred and violated the contractual rights of Electrician Daniel Thomas, Jr. when they assessed him fifteen (15) days deferred suspension as a result of an investigation held on May 25, 1979.
2. That the investigation was neither fair nor impartial as required by Rule 23 of the IBEW-Amtrak Agreement.
3. That, therefore the assessment of fifteen (15) days deferred suspension be rescinded.

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, an Electrician at Carrier's Eighth Street Coach Yards in Los Angeles, California, was charged with "(V)iolation of Rule K ... in that you failed to protect your entire assignment as an electrician at the Eighth Street Yards, absenting yourself as follows: One (1) hour twenty (20) minutes on April 15, 1979; Four (4) hours on April 27, 1979; One (1) hour on April 29, 1979; Two (2) hours on May 4, 1979; and two (2) hours ten (10) minutes on May 6, 1979."

According to Carrier, Rule K provides that:

"Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor."

Pursuant to an investigation which was conducted on May 25, 1979, Claimant was found guilty of only one (1) of the five (5) charged absences, that of May 6, 1979, and, as a result, was assessed a fifteen (15) day deferred suspension. Said suspension is the basis of the instant claim.

In regard to the May 6, 1979 incident itself, the record shows that at approximately noon on said date, Claimant, who was on duty at the time, received a telephone call from his wife who allegedly informed him that one of the neighborhood children had fallen into the swimming pool at Claimant's home and had been injured ("almost drowned"). Claimant also alleges that, in the course of this conversation, he detected that his wife was "(V)ery upset, nervous and panicky ..." and she requested that he return home in order to attend to the matter. Thereupon Claimant went to his gang foreman, M. Bradfield, who informed Claimant "... that he'd (Claimant) have to go see the general car foreman (V. Dunn) and explain the situation to him before he could leave the company property."

According to Foreman Dunn, upon hearing Claimant's request, he (Dunn) did not give Claimant permission to leave work, but Claimant had decided to leave anyway; and, as Claimant was walking out of the office, Dunn allegedly stated to him, "I see you're going to go. So with your record, I need a statement from the doctor, stating that you're taking this boy under these conditions, before you come back to work Monday." The record shows, however, that no such statement was presented by Claimant upon his return to work; nor was one requested of him by Carrier. Regarding this point, Claimant contends that when he arrived at home on the preceding Friday, the neighbor boy, who had almost drowned, had recovered sufficiently and there was no need to take him to the doctor's at that time.

Organization's position in this matter is two-fold. First, Organization contends that Claimant's hearing was not conducted fairly and impartially as is required because the Hearing Officer allowed evidence to be entered into the record regarding Claimant's prior counselings for absenteeism. According to Organization, such evidence, in addition to being irrelevant to the pending charge, "... biased (the Hearing Officer) against the Claimant ..." (First Division Award 11130). Secondly, Organization also argues that the facts of record do not establish that Claimant was guilty as charged since said record "... leaves no alternative but to believe that Mr. Dunn implied to the Claimant that he had permission to go home so long as he returned with a statement from the doctor."

Carrier's position, simply stated, is that no procedural error was committed by the Hearing Officer in the conduct of the hearing itself because the disputed testimony regarding Claimant's prior counselings was not used to establish Claimant's guilt of the instant charge but merely "... to establish that he had been put on notice before the date in question that his attendance habits were not satisfactory"; and that such prior counselings were referred to by Foreman Dunn in his conversation with Claimant on May 6, 1979. Regarding the merits portion of this dispute, Carrier argues that there can be no doubt that Claimant left work without permission because Supervisor Dunn did not give him "... specific, affirmative permission to go home ..." and further that permission, in such instances, cannot be inferred.

Upon a complete and careful analysis of the entire record which has been presented in this matter, the Board is persuaded by Organization's contentions and will so rule. In reaching this decision, the Board, by and large, has been influenced by two (2) significant factors. First, though Supervisor Dunn may not have specifically granted Claimant permission to leave work and go home on May 6, 1979, neither did he specifically deny Claimant such permission. Mr. Dunn's

very own testimony leaves no doubt that his statement to Claimant at the time was not precise and was more of an acquiescence of Claimant's request than a denial thereof.

Secondly, Claimant's contention that he believed that Supervisor Dunn had granted him permission to leave work early is supported by Foreman Bradfield's testimony as follows:

"Q. (Mr. Egan): Mr. Bradfield, on the last occasion that we were speaking of, May 6, 1979, did Mr. Thomas ultimately receive permission to take himself away from his job assignment?

A. (Mr. Bradfield): From the general foreman, yes."

The significance of the foregoing response cannot be denied since it clearly indicates either that Claimant did in fact receive permission from Supervisor Dunn to leave work early as he contends, or that the testimony of the two supervisors is contradictory. In either event, such a determination supports the conclusion that Carrier has failed in sustaining its burden of proof in this matter and the Board so decides.

Having made the above determination, there is no need to address the procedural issue(s) which the Organization has raised.

A W A R D

The claim is sustained and Claimant's fifteen (15) days suspension will be rescinded.

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 29th day of September, 1982.