

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Upgraded Carmen Helper J. D. Dees, was improperly assessed a thirty (30) day suspension from service in violation of the Agreement, from October 28, 1979 through November 27, 1979.
2. Accordingly, the Louisville and Nashville Railroad Company should be ordered to:
 - (a) Compensate him for all time lost as a result of the suspension or twenty-three (23) eight (8) hour days a total of 184 hours at the straight time rate.
 - (b) Clear all mention of the improper suspension from the personal files of Carman Helper J. D. Dees.

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 entered Carrier's service as a Carman Helper on August 14, 1974 at its Lafayette, Indiana shops. Claimant was upgraded to a Carman on September 16, 1974, and was working in that capacity on the date of the incident giving rise to this claim.

On September 19, 1979, Claimant failed to show up for work. The Carrier takes the position that Claimant did not call in and report the reason why he could not be at work that day.

On September 20, 1979, Carrier's Assistant Master Mechanic sent Claimant a letter notifying him to report for formal investigation on October 3, 1979, stating:

"You are charged with being absent from your assignment on Wednesday, September 19, 1979 without permission."

The investigation, scheduled for October 3rd, was postponed to October 4, 1979. As a result of the investigation, Claimant was assessed a thirty (30) day actual suspension from October 28, 1979 through November 27, 1979.

The Organization argues that Claimant was unjustly dealt with when he was assessed a thirty (30) day suspension for being "absent" one day and that such action on the part of the Carrier violated Rules 36 and 37 of the controlling Agreement, which read as follows:

"Rule 36

Employee who has been in the service of the Railroad thirty (30) days shall not be dismissed for incompetency, neither shall an employee be discharged for any cause without first being given an investigation."

"Rule 37

If it is found that an employee has been unjustly discharged or dealt with, such employee shall be reinstated with full pay for all time lost."

Claimant alleges that he had had an infected throat six to thirteen days prior to September 19th. On the property, the Claimant submitted a statement from Claimant's physician that Claimant had appointments in the physician's office on September 6th and September 13, 1979. Claimant further alleges that on September 19th, the day in question, his wife called the Carrier's office but, "she couldn't get through". The record shows no contradiction that this occurred; on the property, however, there was no contention by the Claimant or the Organization that Claimant personally contacted or made an effort to advise the Carrier of his absence from work nor was there any communicated request for permission to be off.

It is the position of the Organization that Claimant was not well on September 19th, had lingering effects from the "infected throat", lived away from town, without a telephone and no neighbors who lived nearby that had a telephone. Therefore, the Organization argues that Claimant complied with the requirements of Rule 21 of the Agreement when he was not coming to work. The record shows no contradiction that Claimant was absent without permission on the day in question.

With this as factual background for the event in question, the Board finds, as in previous awards, that there is an obligation on the employee to protect the Carrier's service on the days he is assigned to work. (See this Division's Awards in Nos. 6710 and 8216.) Despite the charges and counter-charges contained in this record, it is clear that the issue here is not whether Claimant's excuse was good cause for being absent from work, but whether Claimant fulfilled his obligation to inform the Carrier and receive permission to lay-off. The

excuse of no telephone and an unverifiable attempt to contact the Carrier is not sufficient to justify Claimant's failure to show up for work on the disputed day and the fact that he did not report the reason why he could not be at work on September 19th.

Therefore, on the merits, the Board is satisfied that there was substantive evidence to support a thirty (30) day suspension. As was said in this Division's Award 1323:

"It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carriers in disciplinary matters, unless the Carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

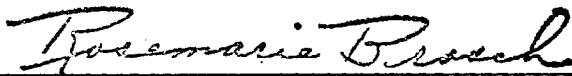
The Carrier has also taken the position that the claim should be dismissed inasmuch as the Local Chairman failed to advise the Master Mechanic that his decision was rejected as required by Rule 58-1/2. As we have denied the claim on its merits, it is not necessary to pass upon this point. However, we do note that the provisions of Rule 58-1/2 are mandatory.

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 15th day of December, 1982.