

The Second Division consisted of the regular members and in addition Referee John Phillip Linn when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
and Canada  
( Southern Pacific Transportation Company (T&L)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rules 19 and 34, when they unjustly suspended Carman J. R. Saunders, Houston, Texas, from service for a period of three (3) days - November 8-9-10, 1978 - following investigation held on October 17, 1978.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Carman Saunders in the amount of eight hours (8') per day at pro rata rate for November 8-9-10, 1978, with seniority rights unimpaired and be granted all benefits that would have accrued to him during the time he was unjustly withheld from 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 waived right of appearance at hearing thereon.

At the time of the subject suspension, Claimant J. R. Saunders was employed as a carman, was age 23, and had been employed by the Carrier since 1974.

The suspension resulted from an incident on October 6, 1978, when Claimant telephoned his foreman one-half hour in advance of his time to start his tour of duty to report off from work in order to attend to out-of-town personal business. Claimant spoke to Car Foreman Daniels (who was not Claimant's foreman) because Foreman Huff (Claimant's foreman) was not yet at work.

Claimant told Car Foreman Daniels (a 31-year service employe of the Carrier) of his reason for reporting off and asked Daniels to advise Foreman Huff. The Car Foreman stated that he would enter the information in the book and convey the message to Foreman Huff. Daniels neither expressly denied nor granted permission to Claimant to be absent.

Claimant was notified by letter dated October 9, 1978, from W. E. Bice, Schedule Foreman, that his absence on October 6, 1978, might be in violation of Rule 810 of the Carrier's General Rules and Regulations, and that an investigation in the matter would be conducted on October 17, 1978.

The pertinent portion of Rule 810 reads:

"Employees must report for their duty at the prescribed time and place, ... they must not absent themselves from their employment without proper authority. They must not engage in other business which interferes with their performance of service with the company unless advance written permission is obtained from the proper officer."

Plant Manager Appelt conducted the scheduled investigation and advised Claimant by letter dated November 1, 1978, that as a result of the investigation Claimant was found in violation of Rule 810 and, consequently, was suspended for three days - November 8, 9 and 10, 1978.

The disciplinary suspension was appealed on the following grounds: First, it was contended that there was no violation of Rule 810 inasmuch as Claimant had complied with Rule 19 and was guilty of no wrongdoing, but reasonably concluded that he had proper authority to be absent from his employment on October 6, 1978. Second, it was contended that because Plant Manager Appelt conducted the investigation on October 17, 1978; assessed the discipline against Claimant; and was then the first officer in the line of appeal, Claimant's rights to the fair and impartial investigation outlined in Rule 34 had been violated.

The pertinent portion of Rule 19 reads:

"In case an employe is unavoidably kept from work, he will not be discriminated against. An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

The pertinent portions of Rule 34 read:

"(a) An employe covered by this agreement who has been in service more than 60 days, or whose application has been formally approved, shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad ...

(d) If it is found that the charges against the employe are not sustained, the record of the employe shall be cleared of the discipline; if suspended or dismissed, the employe shall be reinstated to his former position, unless otherwise mutually agreed, and shall be compensated for the wage loss, if any suffered."

The quoted Rules and Regulations were posted in the Shop for the benefit of employees.

As a matter of practice, employees were given oral permission to be absent from work. Advance written permission from the proper officer has not been required in all instances.

After a careful review of the record in this case, it is the Board's considered judgment that the charge against Claimant has been sustained, i.e., Claimant did absent himself from work on October 6, 1978, without proper authority. Indeed, Claimant made no verbal effort to obtain any authority for his absence. He merely advised Car Foreman Daniels that he would be absent because of personal out-of-town business and requested Daniels to relay this message to Claimant's foreman, Huff.

Although Car Foreman Daniels, with his many years of experience, might have explained to Claimant that the latter acted at his peril in his absence without permission from his Foreman, no significance can attach to this inasmuch as Daniels had no contractual or work duty in the matter. The responsibility for initiating a proper absence lay with Claimant alone.

The Organization's contention that Claimant complied with Rule 19 in notifying his foreman of the need to be absent for a "good cause" is without persuasion. Nothing in the record of this case establishes that Claimant was "unavoidably kept from work" or was "detained from work on account of sickness or for any other good cause". Claimant offered no explanation of the cause of his absence except to characterize it as "personal business". There was no showing that the personal business had to be attended to on the date in question or on any other scheduled work day. Mere characterization of the reason for absence as "personal business" does not rise to "good cause" sufficient to excuse absenteeism.

Further, there was no showing that Claimant's effort to give notification of his October 6, 1978 absence to his foreman was made "as early as possible".

In brief, the evidence in this case is insufficient to bring Claimant within the provisions of Rule 19.

Additionally, it is the judgment of this Board that Rule 34 was not violated. Rule 34 proscribes disciplinary action against an employee who has not first been given "a fair and impartial investigation by an officer of the railroad". Nothing in the record here supports any contention that Claimant did not have a fair and impartial investigation by an officer of the railroad.

Obviously, when the same railroad officer conducts the investigation, imposes discipline, and also sits to review the propriety of the action taken in the appeal process, it is unlikely that the appeal procedure can fully serve its intended function. This reasonable inference, however, in no way does violence to the mandated fair and impartial investigation prior to the initial imposition of discipline under Rule 34.

The procedure followed by the Plant Manager in this case is not considered appropriate to effectual review of cases on appeal, but that procedure is not found here to constitute reversible error under Rule 34.

Even where the Board finds that charges against a claimant are supported by substantial evidence, there is the additional Board function of determining whether the quantum of discipline is appropriate to the offense and to the offender. As stated in earlier decisions in this Division, the function of the Board in this respect is to consider whether the discipline, when related to the seriousness of the charge and the claimant's past record, was so unreasonable as to be found arbitrary, capricious or excessive.

Claimant's record of employment was not placed in evidence. Absent a showing of any aggravating circumstances, this Board may reasonably assume that Claimant's employment record was satisfactory from his hire in 1974 to date of the subject incident in 1978. The issue then is whether the 3-day disciplinary suspension for Claimant's first offense of absenteeism, under the circumstances, was reasonable or excessive.

The Carrier adduced no evidence to show that Claimant's work record was weighed in arriving at an appropriate discipline or that Claimant's subject absence presented any particular problem for the Company.

The Carrier has argued that Rule 34(d) makes no provision for a remedy of pay unless "it is found that the charges against the employe are not substantiated". In this regard, the Carrier reads more into Rule 34(d) than appears there. That Rule sets forth a remedy where charges against an employe are not sustained. It does not speak, directly or indirectly, to the situation where charges against an employe are sustained, but the penalty imposed is found to be excessive by this Board.

The Board has reflected at length on the seriousness of the discipline imposed on Claimant for his proven offense, in light of the totality of the record evidence. It is the determination of the Board that given all the circumstances here the discipline was excessive. A one-day disciplinary suspension would have been sufficient to impress Claimant with the precise procedure which must be followed in obtaining proper authority to be absent and with the significance which the Carrier may rightfully attach to improper absenteeism. Progressive and corrective discipline in this case required no more than a one-day disciplinary suspension.

#### A W A R D

The claim is sustained to the extent that the Carrier is ordered to reduce Claimant's disciplinary suspension from three (3) days to one day, and, consequently, to pay Claimant J. R. Saunders for wages lost on November 9 and 10, 1978.

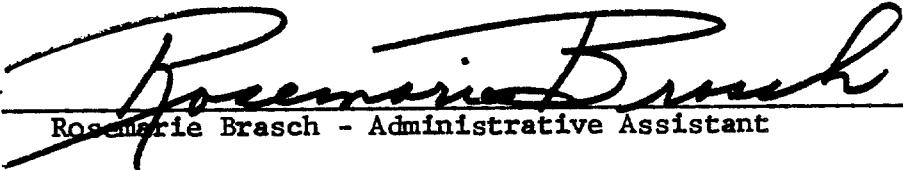
NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Form 1  
Page 5

Award No. 9353  
Docket No. 8926  
2-SPT-CM-'83

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of January, 1983.