

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad Company (SLSF)

Dispute: Claim of Employees:

1. That in violation of the current Agreement Mr. Jacy Harris, Electrician, Burlington Northern Inc., (former St. Louis-San Francisco Ry. Co.) was unjustly suspended from Carrier service from March 29, 1980 and continuing through April 9, 1980.
2. That further in violation of the Agreement, Carrier denied Claimant a fair and impartial investigation as provided for in governing rules and stands procedurally defective.
3. That accordingly, the Burlington Northern Inc., be ordered to make the aforementioned Jacy Harris whole by compensating him for all time lost account this unjust suspension, this to include pay for attending the investigation, February 29, 1980, holiday pay for April 4, 1980 and overtime pay for April 9, 1980. Claim also to include restoration of all seniority rights, vacation time, health and welfare benefits pass privileges and all other rights, benefits or privileges that he is entitled to under rules, agreements, custom or law and the record of the unjust suspension be removed from the record.

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.

This matter involves an absence on February 16, 1980, for which the Claimant was found at fault by reason of not securing permission, thereby failing to protect his assignment. A ten (10) day suspension was issued as a result of the investigation held on February 29, 1980.

Claimant is an electrician at the Carrier's Diesel Shop at Memphis, Tennessee and was scheduled to work from 12:00 midnight to 8:00 a.m. Saturday, February 16, 1980. At about 11:00 p.m. on February 15, 1980, the Claimant telephoned Carrier's foreman and reported he would not be in to protect his assignment scheduled to

begin at 12:00 midnight. Claimant talked to two more foremen as per instructions of each, and failed to receive permission from any of the foremen not to report to work on the first day of his work week.

The Organization contends that the Claimant was not guilty of violating Safety Rules D and F because "he seldom lays off", because "others do" and because in accordance with Rule 22, "he did request to be off". In addition, the Organization raises one procedural point in support of its arguments: that the multiplicity of roles of the hearing officer denied Claimant a fair and impartial investigation. This contention is not meritorious in our judgment because it was first raised before our Board but never properly jointed on the property. Numerous awards of this Board have held that where claims or issues are so raised de novo before our Board, we are foreclosed from considering them.

Carrier contends that Claimant's admitted actions fully justified the ten-day suspension and that the claim should be denied in its entirety. In the main, the Carrier argues that the Claimant stated, not requested, that he would not report for duty during the instant occurrence and, when specifically told by his supervisor that he could not lay off, Claimant chose to ignore the instructions and lay off anyway. Further, the Carrier asserts that a sensible reading of the record evidence supports the hearing officer's finding that the Claimant's last-minute excuse that his car broke down enroute to work was false.

Analysis of the record fails to support the Organization's contentions. Numerous awards of this Board have held that permission must be given to be absent or to lay off work. (See Second Division Awards 8101, 8196, 8975, 9019, 9041 and 9066). As stated by Referee McAllister in Award 9019, "Claimant is held to understand that permission must be given before leaving a job assignment despite his statement he was 'not a little child and I do not need permission to be off from work'". In the record before us, where just the opposite situation occurred, i.e., Claimant was seeking permission to come to work in the first place, rather than permission to leave, there is testimony that Claimant initially just desired and requested time off and said nothing about car trouble problems with transportation to work. When he was referred to the general foreman, Claimant's excuse became that his car was in the shop; ultimately his excuse was that his car broke down enroute. There is no credible evidence that Claimant was ever given permission to be off, and clear and substantial evidence that Claimant was specifically told that permission was not being granted and that he should attempt to get a ride or take a taxi cab to work. At any rate, any credibility determinations are for the hearing officer and not this Board. See, e.g., Second Division Award 7325 (McBrearty). The notice thus was clear and Claimant may not determine when and under what conditions he will report to work. Moreover, the record evidence is unconvincing that other employees had a right to take off from work without permission if their absence record was good and they wanted the time off.

On the merits, the Board is satisfied that there was substantial and substantive evidence of probative value to support the suspension and no foundation in the record to sustain the claim.

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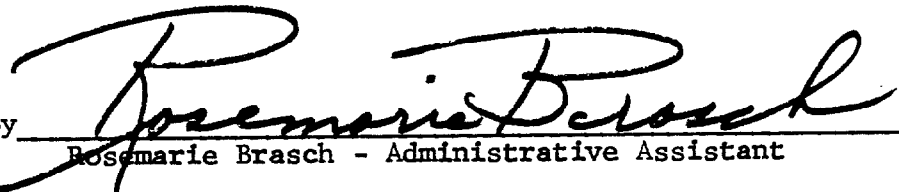
Award No. 9373
Docket No. 9300
2-BN-EW-'83

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 2nd day of February, 1983.