

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it unjustly assessed Carman R. A. Keim a fifteen (15) days actual suspension on January 29, 1980, and reaffirmed by the carrier on April 10, 1980, as a result of investigation held on February 11, 1980, at Brewster, Ohio.
2. That the Norfolk and Western Railway Company be ordered to compensate Carman R. A. Keim for all time lost as a result of discipline assessed on January 29, 1980, that Carman R. A. Keim be made whole for all seniority and vacation rights, and all other rights and benefits provided under the controlling Agreement that he would have received during the period he was unjustly detained from work.

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.

Under Rule 13 (d) of the controlling Agreement Claimant, Mr. R. A. Keim, requested on February 4, 1980 through the Local Chairman of the Organization that a hearing be held to determine the appropriateness of a fifteen (15) day actual suspension from service which he had received on January 29, 1980 for alleged excessive absenteeism. The fifteen (15) day actual suspension was the result of a five (5) day actual suspension which Claimant received on the above date which activated an earlier ten (10) day deferred suspension which he had received on October 22, 1979 for a poor attendance record. A formal hearing on property was held on February 11, 1980.

Rule 13(d) reads, in pertinent part:

"An employee who has been in service more than thirty (30) days ... and is dismissed, suspended or otherwise reprimanded, will be apprised of the precise charge against him and shall have a fair and impartial hearing, provided

written request is presented by the man affected or by his authorized representatives to the official who dismissed, suspended or reprimanded him, within ten (10) days of the taking of such disciplinary action. The employee will be given a reasonable opportunity to secure the presence of necessary witnesses for the hearing. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for his net wage loss, if any, resulting from said suspension or dismissal. Appeals, if taken, shall be in accordance with Paragraph (A) of this Rule 13."

As a result of the hearing the discipline which had been assessed was upheld by the Carrier. It is a point of some importance to this case that Claimant was not assessed the discipline because he was in violation of Rule 10(a) of the controlling Agreement, but because he had engaged in what Carrier termed "excessive absenteeism". For the record, Rule 10(a) reads as follows:

"When an employee wishes to be absent from duty he must obtain permission from his foreman. If detained from work on account of illness or for any other good cause he shall notify his foreman as promptly as possible. If he fails to do so, it will be considered sufficient cause to drop his name from the payrolls and seniority rosters. An employee off duty must notify his foreman when he expects to return to work in sufficient time to permit release of relief man working in his place. Failure to so notify the foreman shall void claim for time due because of reporting and not being used on day of reporting."

A review of the record by the Board leads it to conclude that the Claimant did, indeed, engage in absenteeism which is far above the normal required if a Carrier is to function productively and efficiently. From October 22, 1979 through January 29, 1980 Claimant was absent in excess of 26% of the time. Excessive absenteeism, which may be defined in principle as that point, because of absences, when an employee becomes a liability rather than an asset to a Carrier, has not been sustained by prior Awards of this Board (Second Division 6710, 7348 and 9158 inter alia) and the instant record shows that the Claimant did not pass a reasonable test of the principle noted above. The Board stands on precedent, therefore, when dealing with matters such as these as laid out in Second Division Award 5949 which has parallel application here and which states the following:

"Nothing in the Agreement obligates the carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts, whatever reason or excuse exists for each absence, and even without the complication of work for other employers. His practice, if permissible for him, is permissible for all employees."

The Board finds no grounds to hold that the investigation was not held in a fair and impartial manner. The use of tape recorders at a hearing, when it is ascertained that it does not violate any provision of the controlling Agreement, has been upheld in prior Board Awards (Second Division 8451; Third Division 15890). Nor does the Board have reason to reverse Carrier action on the grounds that the discipline was excessive. The Claimant had been forewarned prior to January 29, 1980 that his attendance record needed improvement. Sufficient substantial evidence is present to deny the claim.

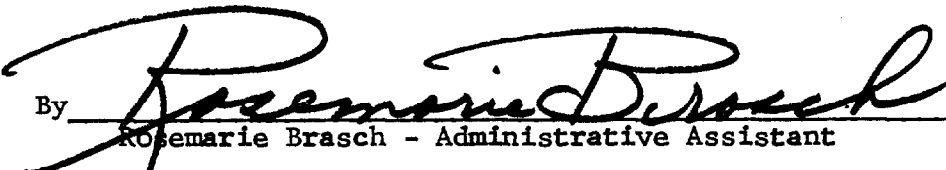
A W A R D

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.