

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

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

Dispute: Claim of Employees:

1. That Carman D. B. Gosnell, Hayne Shop, Spartanburg, S. C. was unjustly suspended from service from November 3rd through November 7, 1980.
2. That the Carrier be ordered to pay Carman D. G. Gosnell five (5) days' pay, the amount of time lost while suspended 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.

The Claimant, Carman D. B. Gosnell, is employed at the Carrier's Hayne Car Shop at Spartanburg, South Carolina. On October 7, 1980 the Claimant was charged in a preliminary investigation with failure to protect his assignment on October 6, 1980; and was assessed a five-day suspension. At that time Mr. Gosnell had eleven years of service and no prior discipline for failure to protect his assignment. Mr. Gosnell requested a formal investigation, which was held on October 17, 1980. By letter dated October 31, 1980, Mr. Gosnell was notified by the Manager of the Hayne Shop that as a result of evidence adduced at the formal investigation he had been found responsible for failure to protect his assignment on October 6, 1980; and that the five-day suspension originally assessed was confirmed. A claim was thereafter filed and properly progressed to this Board.

The Claimant was assigned to work 7:30 A.M. to 4:00 P.M., Monday through Friday. On October 6, 1980, the Claimant did not report for work. He testified that his little girl was sick on Monday morning, October 6, 1980; and that he waited until the doctor's office opened and both he and his wife took his daughter to the doctor's office, leaving their home sometime between 8:30 A.M. and 9:00 A.M. He testified that it was not until 2:00 or 2:30 that he got through with all of the throat cultures. He testified that she was running a fever of 103 or 104 and that she had "Strep throat". Mr. Gosnell testified that

he was aware of the rules in the contract requiring him to report off. He testified that there was a telephone in the doctor's office or in the vicinity of the doctor's office. And that he forgot about calling in during the entire period he was in the doctor's office along with his wife: he claimed he was worried about his girl. Mr. Gosnell reported to his foreman the following morning the reason why he was absent from work the previous day.

The record of the investigation indicates that Mr. Gosnell could have called the Carrier at some period of time during the five-hour period he was at the doctor's office along with his wife.

The Organization relies on Second Division Award 6237; as well as Second Division Award 8911. In Award 6237 the Claimant made an effort to contact his supervisor as soon as possible after taking his injured child for emergency room treatment; and in Award 8911 the Claimant called his foreman at 7:15 A.M. and advised that he might be in, but later did not report, under circumstances where his child was hospitalized on the prior evening with chest pains. In this case the Claimant made no attempt to call the Carrier from the doctor's office.

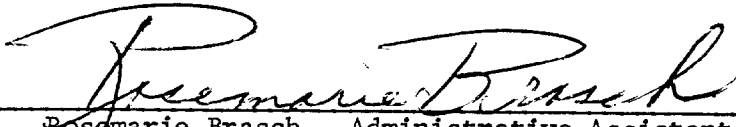
We believe that the Claimant violated Rule 30 when he did not notify his foreman as early as possible that he would be absent; and that he was responsible for failing to protect his assignment on October 6, 1980. We believe that a five-day actual suspension is excessive discipline under the uncontroverted facts of this particular record. The discipline is reduced to a two-day actual suspension. The Claimant shall be made whole for the three work days lost.

A W A R D

Claim sustained in accordance with the Findings.

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 June, 1983.