

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Houston Belt and Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railroad Company violated Rules 22, 27 and 29 of the controlling Agreement when they unjustly, arbitrarily and capriciously assessed Carman R. H. Phillips with thirty (30) days suspension.
2. That the Houston Belt and Terminal Railroad Company be ordered to compensate Carman R. A. Phillips for all wages lost during the thirty (30) days he was suspended, loss to include any and all overtime and or holidays.

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 employes 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 dispute involves the following facts and circumstances, the Claimant is a carman employed by the Houston Belt and Terminal Railroad Company at Carrier's switching facility at Houston, Texas. This duties consisted primarily as that of an A.A.R. write up man at the rip track Monday through Friday, 7:00 a.m. to 3:20 p.m.

On date of August 17, 1981, Carrier sent a directive to Claimant instructing him to appear for investigation at the office of the Master Mechanic at Houston, Texas on August 27, 1981, allegedly account Claimant's absence from the job on date of August 17, 1981. Claimant was also advised that he could arrange for Representative and Witness if desired.

The investigation was twice postponed but eventually held on date of September 23, 1981, over the protest of the Claimant who advised Carrier that he wished to be represented by his General Chairman who could not attend on that date. Claimant was represented by his Local Chairman. On date of October 2, 1981, Carrier informed Claimant that he had been assessed a (30) thirty day suspension.

The Employees contend an unfair investigation account Claimant was not represented by the General Chairman, therefore before going into the merits of the case we must rule on this procedural objection. We note that the investigation had already been postponed for more than a month at the Employees' request. We also, after careful consideration of the facts of the case and in particular the transcript of the investigation, feel that the Claimant was well and ably represented by the Local Representatives and doubt if the General Chairman could have added anything that would have altered or changed the facts as brought out at the investigation. We will deny the Employees' contention of an unfair hearing.

Rule 16 reads in Pertinent part:

"Rule 16. Absence from work on leave.

(a) When the requirements of the service will permit, on request, will be granted leave of absence not to exceed (30) thirty days with privilege of renewal.

(c) The arbitrary refusal of a reasonable amount of leave to Employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the Employees, is an improper practice and may be handled as unjust treatment under the agreement.

(d) Employees shall not lay off without first obtaining permission from their Foreman to do so, except in cases of sickness or other good cause of which the Foreman shall be promptly advised."

In this case the Claimant notified the Foreman on August 14, 1981, thus giving the Foreman (2) two full days to arrange for a replacement. It is also noted that he asked for a single day off, very much less than the (30) thirty days allowable under paragraph (a) of Rule 16. It is clear from the record that Claimant did comply (although he could have been more tactful) with the provisions of Rule 16 in that he did promptly advise his foreman.

We are also very concerned about some of the testimony by Foreman Cates as on Page 13 of the transcript of the investigation he is questioned by the Vice Local Chairman.

"Q. Mr. Cates is there any particular reason why the man could not be off Monday?

A. One reason is I needed him and didn't have anybody to replace him.

Q. Mr. Cates you stated that you didn't have anybody to replace him? You do not have other people who are qualified to write up?

A. I have one.

Q. You have one? Would you state his name?

A. Dan Searcy."

And on page 14 in part:

"Q. Would your decision have been different if he had stayed on the phone and explained the importance of his wanting to be off, and his necessity for being off, would it have made any difference?

A. Yes sir, I believe it would have."

Thus it is apparent that the Claimant has been subject to disciplinary action not because he could not be spared and not because he did not comply with the rule, but rather because of the less than tactful way that he had advised the Foreman of his need for a day off.

Also on page 10 Mr. J. W. McCaddon questions Foreman Cates in part:

"Q. At any time during this frame did you have any conversation with Mr. R. A. Phillips?

A. Yes sir, I did.

Q. Would you explain for the record what this conversation was?

A. I was at the HB&T diesel shop between approximately 5:00 and 5:30 p.m. when I was summons (sic) to the phone by diesel shop foreman, Mr. Jim Brose. I answered the phone and Mr. Phillips told me this is Phillips, I forgot to tell you today that I wouldn't be there Monday. I asked him why? He said because I have relatives coming in from out of town and my wife is raising cane. I said no, no, no, and then I was interrupted by Mr. Phillips saying I won't be there and he hung the phone up."

On page 17 Claimant's representative questions diesel shop foreman Mr. Jim Borse:

"Q. You were in the office at the time that Bobby was talking to Mr. Phillips?

A. Yes sir.

Q. Do you have any hearing imediment or anything?

A. No.

Q. None at all? Did you hear him tell Mr. Phillips that he could not be off?

A. No I didn't.

Q. Did you hear him say no, no, no?

A. No I did not."

The diesel shop foreman was apparently very close to Foreman Cates as both were apparently within arms reach of the telephone but he didn't hear Foreman Cates refuse to allow the Claimant a day off and did not hear him say no, no, no.

It appears very much that foreman Cates has not been completely candid in his testimony, first in stating that he had no one to replace the Claimant and then stating this his answer might have been different had the Claimant explained a little more fully his reasons for wanting a day off. And secondly in stating that in answer to the Claimant's request for a day off he said no, no, no. This less than candid testimony raises a question of credibility as to any testimony by Mr. Cates.

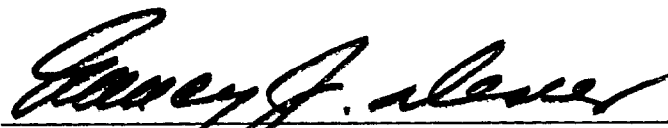
In considering all of the facts of this case we feel that the Claimant although somewhat less than tactful, did comply with the provisions of Rule 16 in notifying his foreman on Friday that he would not be at work on Monday. We also note that Claimant has stated and it has not been denied by Carrier, that this was only the second day he had taken off since 1977, a period of about (4) four years. We certainly do not feel that (2) two days off in (4) four years is at all unreasonable and will sustain the claim. We can state however that had the Claimant been a habitual absentee as is the case with some employees our findings would almost certainly have been different.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984