

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employees:

1. That, under the controlling Agreement, Sheet Metal Worker, Leon Sellers was unjustly suspended from service on December 17 and 18, 1981 resulting from an investigation that was held on November 17, 1981.

2. That, accordingly, the Carrier be ordered to pay the Claimant all wages lost in the amount of 16 hours at the pro rata rate of pay as a result of the two working day suspension.

3. Remove all charges brought against Claimant from his personal 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 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.

The Claimant was charged with the failure to report to work at 11:00 p.m., October 31, 1981 and protect his assignment as Pipefitter (tentative) on his shift which ends at 7:00 a.m., November 1, 1981. After an investigation was held on November 17, 1981, the Claimant was suspended from service by the Carrier on December 17 and 18, 1981.

At approximately 11:15 p.m. on October 31, 1981, Gang Foreman Wilson received a telephone call from the Claimant in which he indicated that he would not report to work, because he had a "severe headache". Gang Foreman Wilson said that the Claimant told him "that he tried to call previously" but he did not get any answer. Between 10:30 p.m. and 11:00 p.m. the Claimant said that he called the Carrier's Enginehouse several times to report off sick but no one answered his telephone calls.

The central query is whether the Claimant violated Rule 19, which provides as follows:

"DETAINED FROM WORK

Employees, except in emergencies, will not absent themselves from work, without first securing permission from their foreman. In the event they are unavoidably kept from work, they will promptly notify their foreman of the circumstances."

Since the Claimant was not unavoidably kept from work, the second sentence of Rule 19 is not applicable to the instant dispute. The Claimant's "severe headache" does not constitute an emergency which prevented him from reporting to work under the terms of the initial sentence of Rule 19. The Board is of the view that the Claimant sought permission from the foreman to be absent, but was unable to do so. As Gang Foreman Wilson acknowledged, the Gang Foreman on the 3:00 p.m. to 11:00 p.m. shift is "rarely***ever in the office" between 10:30 p.m. to 11:00 p.m.

The burden of proof in disciplinary cases is on the Carrier. Upon carefully reviewing the record the Board concludes that the Carrier has not presented sufficient evidence to satisfy its burden of proof. After securing the telephone monitoring tape for October 31, 1981, Conducting Officer Beach said that the notation on the tape indicated that "the paper tore and the machine stopped" during the morning of October 31, 1981. The tape was not reactivated until November 2, 1981. Thus, the Board was unable to verify that Claimant did not call prior to 11:00 p.m. to secure permission to be absent from work.

The record fails to disclose that the Claimant would not have secured permission from his foreman to be absent from work because of his "severe headache". Indeed, it is undisputed that he had "previously" been absent from work due to a headache. Furthermore, there is nothing in the record to warrant the conclusion, as the Carrier contends, that the Claimant "knew or should have known, that he would be unable to work long before one-half hour prior to" 11:00 p.m. on October 31, 1981.

Since the Carrier failed to prove that the Claimant violated Rule 19, on October 31, 1981, there is no need to consider the Claimant's past record.


The Board concludes that the Claimant is to be paid for all wages lost as a result of his suspension on December 18 and 19, 1981. The commission of the offense by the Claimant and the penalty imposed by the Carrier are to be removed from his record.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devall - Executive Secretary

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