

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- 1.(a) That Carmen J. W. Barrow was improperly given a sixty (60) day actual suspension from service of Carrier from January 14, 1980, through March 14, 1980, inclusive in violation of Rule 34 of the Current Agreement by way of letter dated January 11, 1980, and
- (b) Accordingly, the Louisville and Nashville Railroad Company should be ordered to compensate Carman Barrow for all time lost as a result of said improper suspension, or three hundred sixty (360) hours at the straight time rate of pay.
- (c) Carrier should also be instructed to clear Carman Barrow's personal file of all implications and allegations (sic) as charged.
- 2.(a) That the Carrier is improperly giving actual days suspension as discipline which is not in line with the provisions of Rule 34 Discipline, of the Current Agreement, and
- (b) According (sic), Carrier should be instructed to suspend such actions until such time as the matter of giving actual days off has been contractually agreed to.

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.

Following an investigative hearing, Claimant was assessed a disciplinary penalty of 60 calendar days for "insubordination and leaving your job without permission". Giving rise to the charge was an incident in which the Claimant advised his Foreman that he was ill and was going home, at the time that the Foreman was giving further work instructions to the Claimant and two other employes at approximately 1:05 p.m.

The record shows that the Foreman did not grant or withhold permission for the employee's departure. When the Foreman followed the employee to the latter's car to seek further information regarding the nature of the illness, the Claimant provided no information and simply drove away.

The Organization argues that the Claimant was in compliance with Rule 22 and should not be subject to discipline. Rule 22 reads as follows:

"RULE 22 Absence Account Sickness

An employee detained from work account of sickness or other good cause shall notify his foreman as early as possible."

Rule 22 does not exempt an employee from providing information such as requested by the Foreman, especially when the "illness" arose in the middle of the shift as additional work was being assigned. The Foreman, however, could well have given an affirmative or negative answer at the time of the employee's original statement. Discipline is warranted, but the penalty is overly harsh in view of the circumstances.

The Organization also contends that the imposition of a 60-calendar-day suspension was improper, since the Organization alleges that the Carrier was using the "Brown System of Discipline" which had not been negotiated. There is no substantiation that such penalty is improper under Rule 34, however, and the Board has no basis to support the Organization's contention.

A W A R D

Claim No. 1 sustained to the degree that the penalty shall be modified to a 30-calendar-day suspension, and the Claimant shall be made whole for straight-time earnings lost thereafter.

Claim No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.