

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Burlington Northern Railroad, Inc.

Dispute: Claim of Employees:

1. That the Carrier's action in dismissing Laborer Shaun B. McGinn from its service on October 23, 1981, was indeed harsh, out of proportion, excessive and constituted an abuse of discretion.
2. That accordingly, the Burlington Northern, Inc. restore Laborer Shaun B. McGinn to service -
  - (a) With his seniority rights unimpaired;
  - (b) Compensation for all time lost;
  - (c) Make whole for all vacation rights;
  - (d) Paid premiums (or hospital dues) for hospital, surgical and medical benefits for all time held out of service;
  - (e) Pay premium for his group life insurance for all time held out of 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 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.

Claimant, Shaun B. McGinn, was employed as a hostler helper by the Carrier at its Springfield, Missouri, Locomotive Shop. His regular assigned shift was 4 p.m. until 12 a.m.

By notice dated October 12, 1981, the Claimant was charged with leaving Company property at 9:50 p.m., October 9, 1981, without permission. Following the investigatory hearing, which was held on October 20, 1981, Claimant was found guilty of violating Rule E of the Rules, Regulations, Safety Rules, and Instructions Governing Mechanical Department Employees and was dismissed from service effective at the close of his shift on October 23, 1981.

Rule E states in part:

"Employees must promptly obey instructions or warnings of danger given verbally, in writing, by bulletin or notice, or by posted signs ..."

The record indicates that at 9:50 p.m. on October 9, 1981, Diesel Foreman Allred gave Claimant and fellow hostler, Phyliss Abney, permission to eat. Claimant and Abney then got into Abney's car and left the property without clocking out. They returned ten minutes later without clocking back in.

A notice, posted December 19, 1980, forbids the leaving of Company property without the permission of the supervisor. The notice reads:

"NOTICE: ALL SPRINGFIELD DIESEL  
SHOP EMPLOYEES

It has come to my attention that there is a misunderstanding regarding leaving company property during the 20-minute lunch period.

If any employee desires to leave the property for lunch or any reason, the foreman must give permission and the employee will clock out and back in if returning to work.

The lunch period for all shop craft employees at the Diesel Shop is 20 minutes.

J. H. Hall\*

Claimant testified that he was unaware of this notice. He further testified that he believed he had permission to leave the property to eat. Foreman Allred testified that he did not give the Claimant and Abney permission to leave the property, although he did give them permission to eat.

The Organization's position is that the Carrier's action in dismissing the Claimant was harsh, out of proportion, excessive, and constituted an abuse of discretion.

The Carrier's position is that the dismissal of the Claimant was not arbitrary or capricious. Carrier argues that Claimant clearly violated Rule E by leaving the property without permission. Moreover, Carrier argues that Claimant's personal record shows that Claimant was aware of the notice regarding leaving Company property.

Claimant's personnel record contains the following entries:

February 26, 1981--Letter from J. L. Lorenz to Mr. McGinn advising of formal hearing scheduled for 3/4/81 to develop facts in connection with charge that he left the company property without permission of his supervisor, at about 12:10 p.m., February 25, 1981.

March 4, 1981--Letter signed by Mr. McGinn waiving rights to formal hearing and admitting violation of Rule "E," accepting letter of reprimand.

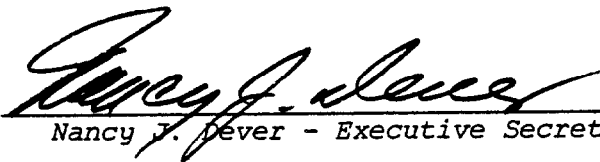
It is well established that this Board should not substitute its judgment for the Carrier's in discipline cases unless the discipline assessed by the Carrier is found to be arbitrary and capricious. This Board finds that the Claimant did violate Rule E. However, the Carrier's dismissal of Claimant was arbitrary and capricious and too harsh. As admitted by the Carrier, the discipline should be progressive so as to warn an employe that his continued disregard for the rules will be met with more severe discipline. This record indicates that the Claimant was reprimanded for leaving Company property prior to this incident. The next step in progressive discipline should be a suspension and not a dismissal. This Board finds that the proper discipline in this case is a lengthy suspension. Claimant should be reinstated to service without back pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of August 1984.