

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

That the Seaboard Coast Line Railroad Company violated the controlling agreement when Carman W. A. Wiley was unjustly assessed 30 days suspension commencing November 22, 1981 through December 21, 1981 as a result of an unfair investigation on September 30, 1981.

The Seaboard Coast Line Railroad Company was procedurally defective in charging Carman Wiley with violation of Rule 12 of the Rules and Regulations of the Mechanical Department - that portion dealing with dishonesty.

That accordingly the Seaboard Coast Line Railroad Company be ordered to compensate Carman Wiley for each days pay he lost as a result of this unjust suspension, as well as all medical and dental bills he may have incurred and all overtime he would have made had he not been suspended.

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 12, 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, W. A. Wiley was charged by Carrier with failing to report for his assignment under Rule 19 of the controlling agreement, and dishonesty under Rule 12 of the Rules and Regulations of the Mechanical Department.

Rule 19 provides:

"In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

Rule 12 reads:

"Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, wilful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal."

Subsequent to a formal investigatory hearing, Claimant was assessed a thirty-day suspension.

Claimant had been placed on a ninety (90) day suspension, and was due to report back for duty on July 15, 1981. Approximately three days prior to termination of Claimant's suspension, he suffered an off the job injury and received medical attention with a release date of August 17, 1981. During the period of the 90 day suspension up until the time when he was released for duty on August 17, 1981, Claimant had filed for and received unemployment pay. The parties did not contest the fact that Claimant was eligible, and should have properly applied for sickness benefits when injured.

The record is devoid of substantial, credible evidence that Claimant was dishonest in his receipt of unemployment benefits. The benefits received were in fact of substantially less monetary benefit to Claimant than if he had filed correctly. In addition, there is evidence in the record of confusion between Carrier and Claimant as to benefits received during the period of suspension, and the continuation of such benefits.

This Board is of the opinion that while Claimant placed unjustified reliance upon Carrier personnel to insure that he received the proper benefits, the record demonstrates he did so innocently without an attempt to lie, cheat or defraud Carrier. Even Claimant's foreman with 30 years experience testified he was unable to explain the difference in procedure between sick benefits and unemployment compensation.

However, this Board finds that Claimant failed to comply with the notice requirements mandated by Rule 19. The Organization maintains the untenable position that because Claimant marked off sick the day before his ninety-day suspension, and as Carrier's supervisor testified he assumed Claimant was still sick when he had not heard that Claimant was cleared to go back to work, Claimant's duty to report pursuant to Rule 19 was vitiated. No evidence was presented that Claimant was unable to notify his foreman despite suffering his injury four days prior to his return date. This Board will not condone unreported absenteeism. Second Division Awards No. 9704, 7748, 7726.

The Claimant did present medical evidence explaining the nature of his injury, diagnosis, and the duration of care. In light of this Board's disposition of the Rule 12 charge, and the evidence which mitigates the violation of Rule 19, the discipline assessed is hereby modified to 15 days suspension, and Claimant shall be compensated for wage loss in accordance with Rule 32.

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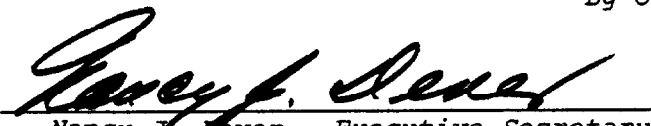
Award No. 10042
Docket No. 10307
2-SCL-CM-'84

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 22nd day of August 1984.