

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement Service Attendant L. L. Byrd, I. D. No. 111369, was unjustly suspended from service of the Louisville and Nashville Railroad Company, South Louisville Shops, Louisville, Kentucky, on January 14, 1982 through April 7, 1982, inclusive, after a formal investigation was held on December 17, 1981.
2. That accordingly Service Attendant L. L. Byrd be compensated for all lost time, vacation, health and welfare benefits, hospital and life insurance and dental insurance premiums be paid effective January 14, 1982 through April 7, 1982, inclusive, and the payment of 6% interest rate be added thereto.

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 entered Carrier's service at its South Louisville Shop, and, at the inception of this dispute was working as a service attendant on the 7:00 a.m. to 3:00 p.m. shift. On December 7, 1981 the Carrier sent Claimant a letter notifying him to report for formal investigation on the charge that Claimant was in violation of Rule 22, which states as follows:

"Rule 22: Absent Account Sickness

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

The investigation, scheduled for December 11, 1981, was rescheduled and as a result of the investigation, Claimant was assessed a sixty-day suspension from January 14, 1982 through April 7, 1982.

Claimant admits that he did not report for assignment on December 2, 3 and 4, 1981, and further admits that he failed to notify the Carrier of his absences on December 2 and December 4. When asked about his December 3 absence, Claimant stated that his wife "has called a couple of times"; Claimant did not specify, however, whether his wife in fact called to report that particular absence. Claimant alleges that he "had a lot of things on (his) mind", but there is no evidence in the record that Claimant requested permission to be off.

The Organization argues that Claimant was unjustly dealt with when he was assessed a sixty (60) day suspension for being "absent" three days and that such action was arbitrary, capricious and an abuse of managerial discretion.

It specifically takes the position that Claimant complied with Rule 22 by attempting to notify the Carrier, and that Claimant provided sufficient excuse for his three-day absence.

The Carrier submits that the testimony at the hearing supports the charge preferred against the Claimant. According to the Carrier, the disciplinary action was warranted and justified given the seriousness of the proven charge, and taking into consideration the Claimant's past record of absenteeism, which reveals that Claimant previously accepted a ten-day suspension for his unexcused absences on August 7 and 13, 1981.

The Board finds the summarized evidence overwhelmingly substantial with regard to Claimant's excessive days of absenteeism without valid reason and with regard to Rule 22 of the controlling agreement. It is well established that there is an obligation on the employee to protect the Carrier's service on the days he is assigned to work. (See this Division's Awards 6710 and 8216.) It is clear that here Claimant did not fulfill his obligation to inform the Carrier and receive permission to layoff. The excuse of an unverifiable attempt to contact the Carrier on one day is not sufficient to justify Claimant's three-day absence.

Therefore, the Board is satisfied that there was substantive evidence to support a sixty (60) day suspension. As was said in this Division's Award 1323:

"It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carrier's in disciplinary matters, unless the Carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

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Award No. 10068
Docket No. 10089
2-L&N-FO-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.