

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

Parties to Dispute: (W. E. Parker
(
(Southern Railway Company

Dispute: Claim of Employees:

1. W. E. Parker, Carman, was unjustly dismissed from service of Central of Georgia Railway Company, Southern Railway System, Columbus, Georgia on October 27, 1981 for allegedly not protecting his assignment on Job #5, Friday, October 16, 1981, working from 3 P.M. to 11 P.M. Pertinent portions of transcript of investigation will show that Carrier failed to prove its charge.
2. That accordingly, the Carrier be ordered to return Carman W. E. Parker to service with all rights unimpaired including reimbursement of any loss sustained account of loss of coverage under the Health and Welfare Agreements and that beginning October 28, 1981 he be paid for all time lost until restored to 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 were given due notice of hearing thereon.

The Claimant, a Carman, has been employed by the Carrier at its facility located in Columbus, Georgia. On Friday, October 16, 1981, the Claimant did not report for work, because as a Seventh Day Adventist, he observed the Sabbath. The Claimant was charged with failing to protect his assignment and at a preliminary investigation, that was held on October 26, 1981, he said that he would not protect his assignment on Fridays due to his observance of the Sabbath. He was dismissed from service on October 27, 1981. His dismissal was confirmed following a formal investigation which was held on November 3, 1981.

The Board concludes that the Claimant's absence is not excused by his religious conviction. In Public Law Board, 2335, Award 1, the following was stated:

"The Board finds that Carrier's conclusion that Claimant's absences were not excuseable because of his religious beliefs is sound, proper and a conclusion that will be here upheld. The issue raised is not a new one in the industrial world. A case involved facts similar to those here was brought before the United States Supreme Court in Trans World Airlines, Inc. vs. Hardison, 432 U.S. 63 (1977)."

The Carrier is not required to circumvent the seniority system or its work schedule by granting the Claimant preference over other employes with regard to the selection of assignments and hours to accommodate his religious needs. See Second Division Award No. 8660. There is no Rule in the Agreement which entitles the Claimant to special consideration based upon his religious convictions. To sustain the instant claim would require the Carrier to permit the Claimant to work a four (4) day week or pay overtime in order to cover his assignment. Either result is untenable.

Prior to October 14, 1981, the Claimant held a job which did not present a conflict between his observance of the Sabbath and the assigned working hours on the job. By his bid which was received by the Carrier on October 12, 1981 he voluntarily chose to change jobs and thus he was aware that he would be required to work on his chosen Sabbath.

It is not disputed that the Claimant informed his foreman that he would be absent on October 16, 1981 to observe the Sabbath. The Claimant never requested permission to be absent on October 16; nor was it given by the Carrier. Rule 30 (a) requires an employe to notify his foreman; it does not excuse absenteeism for other than good cause, which was not demonstrated in this case.

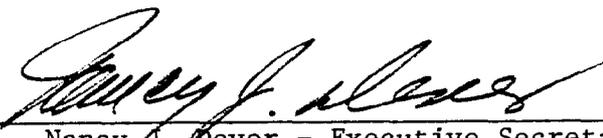
In light of the Claimant's failure to protect his assignment on October 16, 1981 and his steadfast determination not to protect his assignments on Fridays, the Board has no alternative other than to sustain his dismissal by the Carrier.

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 17th day of October 1984.