

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
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Fireman and Oiler Marge White was unjustly suspended from the service of the Carrier for 30 days from September 30, 1980, and ending October 3, 1980.
2. That accordingly, the Carrier be ordered to compensate the aforesaid employe at the pro-rata rate of pay for all time lost due to the unjust 30-day suspension.

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, Marge White, entered the Carrier's service at its Sacramento, California, Locomotive Works as a Fireman and Oiler (laborer) on July 25, 1979.

The Claimant had allegedly suffered a back injury on January 15, 1980, and had returned to duty on July 21, 1980, with certain work limitations placed on her by her treating physician. The work limitations suggested were that Claimant not work with hoses or do any heavy lifting. Upon her return to work, Claimant was instructed that she was not to perform any work that did not fit in with those restrictions.

On July 31, 1980, the Claimant was assigned to work in the Cleaning Building for the following week. The work assigned to Claimant by Foreman Soto involved the handling of hoses. Claimant did not tell Foreman Soto that she was restricted from handling hoses.

After performing the work for approximately one-half hour, Claimant stated that she had suffered an injury to her back. The Claimant was taken to the hospital, treated, and released.

As a result of this occurrence, the Claimant was notified to attend a formal hearing for violation of Carrier Rules 801 and M, which pertained to dishonesty, misconduct, or wilful disregard or negligence affecting the interests of the Carrier and carelessness.

Rule 801 states in part:

"Employees will not be retained in the service who are...dishonest..., or who conduct themselves in a manner which would subject the railroad to criticism.

Any act of misconduct or wilful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported."

Rule M states:

"Carelessness by employees will not be condoned and they must exercise care to avoid injury to themselves or others."

The hearing was to take place on August 26, 1980. Thereafter, a series of postponements of the investigation were requested by Mr. J. H. Parker, Local Chairman of the Fireman and Oilers, representative of Claimant. Mr. Parker was granted two postponements, the first until September 3, 1980, and then the second until September 18, 1980, in order that General Chairman Walter W. John could represent Claimant. On September 15, 1980, the Vice Local Chairman requested, on behalf of Claimant, a two-week postponement so that he, too, could be present at the hearing. Said request was denied, and the hearing was held on September 18, 1980, with the Claimant being represented by the General Chairman of the Firemen and Oilers' Organization, Walter W. John, and the Local Chairman of the Firemen and Oilers' Organization, J. H. Parker.

The Claimant was found responsible for her carelessness on July 31, 1980, for accepting a work assignment which was contrary to the work limitations placed on her by her physician and for failing to notify her foreman of her limitations. As a result, Claimant was suspended from service for a period of 30 calendar days, or a net of 22 working days.

The Organization contends that Carrier's action in suspending Claimant for 30 days was an arbitrary, capricious, and unjust action and an abuse of managerial discretion.

The Organization argues that the Carrier did not produce the necessary evidence needed to substantiate the charge. The Organization contends that the notice was improper because it merely charged the Claimant with "dishonesty" and was not a "precise charge" as required by Rule 33.

Moreover, the Organization argues that the presiding officer did not conduct the hearing in a fair and impartial manner as he refused to postpone the hearing for a third time; thus, not allowing Claimant to have the representative of her choice.

Moreover, the Organization contends that Claimant was disciplined for sustaining an on-the-job injury even though the Carrier violated the restrictions which had been placed on the Claimant by her doctor upon her return to work. The Organization contends that it was the Carrier who was at fault since it did not notify its supervisors of the restrictions.

The Carrier contends that when Claimant returned to work, her job restrictions were carefully explained to her; and she was instructed not to perform any work that did not fit within those restrictions.

The Carrier contends that Claimant was careless because she did not inform the new foreman, to whom she was assigned, about her restrictions.

The Carrier contends further that Claimant's carelessness was premeditated in that she expressed her dislike for her work and may have injured her back on purpose.

The Carrier also contends that there is no merit to the procedural arguments put forth by the Organization, and the Carrier submits that the hearing notice was sufficiently precise to apprise Claimant of the charges against her.

Finally, Carrier states that the hearing was fair and impartial as two postponements had been granted to the Claimant to accomodate her. Claimant and her representatives had adequate time to prepare her defense and sufficient leeway to question the witnesses against her.

This Board has reviewed all of the evidence and testimony in the record and finds that the hearing was fair and impartial. The Claimant was afforded sufficient rights in the hearing to defend herself against the charges against her.

This Board also finds that there was sufficient evidence presented at the hearing to support a finding of guilt as to carelessness. The Claimant knew of her restrictions and had an obligation to inform the new foreman of them. Although we are not convinced that Claimant's action was wilful, as the Carrier argues, at the very least, Claimant was careless, violated Rule M, and deserving of discipline.

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However, we do find that the 30-day suspension imposed by the Carrier was too severe as it appears to be based on what the Carrier viewed as intentional acts on the part of the Claimant. We hereby reduce the penalty to a 15 calendar day suspension.

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 14th day of November 1984.