

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 10204  
Docket No. 9635  
2-SP-FO-'85

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

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( The Southern Pacific Transportation Company  
(Western Lines)

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler Ramona Hoover, was unjustly suspended from the service of the Carrier for 15 days from September 16, 1980 through and including September 30, 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 15 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.

The claim protests the 15-day suspension imposed on the Claimant for unauthorized absence from assignment and insubordination.

The Claimant, a Laborer, vacated her shift six hours early on August 2, 1980 after her immediate Supervisor denied her permission to leave because of claimed illness. She refused to discuss the matter on the phone with the Assistant Plant Manager. She marked off sick and left.

The Claimant explained that she followed normal procedure for marking off sick and that she subsequently submitted a Doctor's note. She further asserted that she was not insubordinate but refused to speak with the Assistant Plant Manager without a Union representative present, and that a more senior employe than she was also refusing to do so at that time on the same ground.

The Organization contends that the Carrier's determination of the charges was arbitrary and capricious and that the Claimant was denied a full and fair hearing in that her representative was not permitted to fully question witnesses and introduce evidence.

The Carrier counters that all charges are supported by substantial evidence and that the hearing was fair and impartial. It asserts that the Hearing Officer properly conducted an expeditious hearing, confining the testimony to the charges made. As to the merits, it asserts that the Claimant left early due to an increased workload and not primarily because of illness.

Upon review of the entire record, the Board finds that the hearing was fairly conducted and that the Claimant had a reasonable opportunity to support her defense.

It is undisputed that the Claimant left work without permission. We are not convinced from the evidence that she was too sick to work. The statement of two co-workers as to how she looked and a Doctor's note dated two days after the event are insufficient to support her assertion. The evidence strongly suggests that illness was not her primary motivation for leaving work.

While the Claimant refused to talk with the Assistant Plant Manager, we find that she acted in good faith and not in defiance of authority. It appears that she reasonably believed she needed a Union representative at the time. In this she also appears to have been misled by her more senior fellow worker.

The Board finds that a 15-day suspension was excessive. In view of the Claimant's past record of absenteeism, a 10-day suspension is warranted.

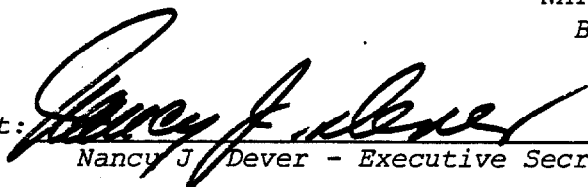
The Agreement was not violated insofar as the charges are concerned. The Agreement was violated insofar as the penalty is concerned. The Claimant shall be reimbursed for five days lost by reason of the suspension.

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 16th day of January 1985.