

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada, A.F.L. - C.I.O.
(Southern Pacific Transportation Company
((Texas and Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rules 19 and 34 when they unjustly suspended Carman M. D. Pesek from service pending investigation which was held July 12, 1980, following which he was suspended from service for a period of thirty (30) days.

2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Carman Pesek for thirty (30) days, June 3, 1980 through July 3, 1980, eight hours (8') per day at the current carmen's straight time rate and for any overtime he would have earned during the period of his 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 M. D. Pesek, was suspended for 30 days for absence without authorization on May 22nd, 23rd and 24th of 1980. An investigation originally scheduled for June 2nd was eventually held on June 12, 1980.

Procedural violations alleged by the Organization are not compelling. The letter of charge was specific as to both the nature of the alleged violation and the dates relevant to the charge. The fact that the Hearing Officer commented on an additional day of absence (which occurred after issuance of the charging letter) did not deprive Claimant of a fair investigation of the dates actually charged. It is noted that a different Carrier Officer, Claimant's Foreman, was brought as witness and functioned only in that capacity. Second Division Award 8188. The Board further sees no impropriety in the fact that the Officer who originally cited Claimant also issued the discipline and rules on the first appeal. Particularly in a case where the citation stems from the fact of the absence and the reasons or proffered explanations would have to be gleaned from the record of investigation, there is no reason to assume prejudice with respect to a defense which was unknown at the time of citation. Second Division Award 7196.

With respect to the charged days of absence, Claimant offered a doctor's note dated June 1, 1980, which appears to have been a Sunday, stating that he was under the doctor's care for a respiratory infection from May 22, 1980 to May 24, 1980. Somewhat inconsistently with this explanation Claimant argued that he left a note for his Supervisor at 6:30 a.m. on May 20th advising him that he would be absent on the 22nd. His Supervisor initially placed the finding of the note on the 20th, but later changed his testimony to say that he found it on the 22nd, the first day of absence. The Organization challenged this change in testimony, contending that the note had indeed been left on the 20th and that since Claimant worked both the 20th and 21st, the Foreman had ample opportunity to respond to the note.

Carrier first points out that the obligation to obtain permission for absence under Rule 810 is clearly on the employee, and not the other way around. Thus, Carrier contends even if Claimant had left the note on the 20th, it was up to him to check with his Supervisor about his requested absence. Secondly, Carrier points out that insistence that the note was delivered two days before the absence renders Claimant's belated excuse that he was ill and under a doctor's care ludicrous. Surely one cannot anticipate coming down with a respiratory infection two days in advance. While one might anticipate a doctor's appointment, there is no evidence that any doctor saw Claimant on any of the three days in question.

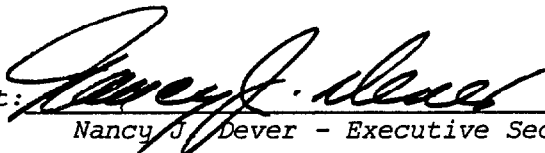
After reviewing the record the Board is totally unimpressed with Claimant's alleged illness and finds that the evidence amply supports Carrier's determination.

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 6th day of March 1985.