

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada  
Parties to Dispute: (  
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, Carman James Schmitz, Fond du Lac Shops, WI. was unjustly suspended from service, effective April 9, 1983 through April 24, 1983 due to an investigation held on March 10, 1983 at N. Fond du Lac, Shops, WI. being charged with violation of Rule 19, Par. 1 and 2, on February 28, 1983.

2. That accordingly, the Soo Line Railroad Company be ordered to compensate Carman Schmitz for loss of compensation of pay for 10 work days, at 8 hours each, at straight time Carmen's rate of pay, on dates of April 11, 12, 13, 14, 15, 18, 19, 20, 21 and 22, 1983, for being unjustly removed from service and that investigation be removed from his personal file for Soo Line R.R. Co. violation of Rule 32, and failure to show burden of proof of charge.

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 Claimant, James Schmitz, a Carman in the Fond du Lac, Wisconsin Shops, was suspended from service for a period of ten workdays following an investigation held on March 10, 1983. The Claimant was in service for eighteen years.

The Claimant was absent from work on February 28, 1983, and was charged with violating Rule 19, Paragraphs 1 and 2, which require Employees to notify supervision as soon as possible regarding absences due to illness or emergency, and to obtain prior permission for absences from work due to other causes.

The Organization argued and the investigation showed tht the Claimant tried to call the Carrier six or seven times between the hours of 7:00 P.M. and 11:30 P.M. The Claimant was due to start his shift at 8:00 P.M. that evening and finally called his Leadman for the second half of his shift at the Leadman's home later in the evening. This was confirmed by the Leadman at the investigation. The Organization noted that the Claimant did try to comply with Rule 19, and that the Carrier has not shouldered the burden of proof required in cases such as this. The record shows that the Claimant received a busy signal when he attempted to call to report off.

The Carrier argued that an August 29, 1978 notice designated the proper procedure and phone number to call when Employes wish to lay off. While the position was changed, the phone number continued to remain the same. The Claimant testified that he knew of the other phone number, but did not try to use it. The Carrier further argued that calling the midnight Leadman several hours after the Employe was due to report to work does not do the Carrier any good. The Carrier had to hold over another Employe at premium pay in order to cover the assignment. The Carrier noted that this Employe, in failing to get through on one number, certainly should have tried the other number in order to report off.


There is no question in this case that the Claimant did not call on the night in question. There is no dispute that the Claimant did try to call, though he called the wrong number. Rule 19 charges an Employe with notifying his Supervisor as soon as possible in cases such as this involving sickness or emergency. The Claimant has had conferences regarding absenteeism during October of 1980 and January of 1983, the latter being approximately one month from the incident in question. Under those circumstances, he certainly should have made himself aware of the requirements of the Carrier for reporting off. The Board finds the Carrier has sustained the burden of proof in this matter and the discipline assessed was not so harsh that the Board would be willing to substitute its judgment for that of the Carrier. Therefore, we will find that this claim is denied.

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 14th day of August, 1985.