

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

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute:

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(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when Carman A. A. Abercrombie was unjustly suspended for thirty (30) days after an unfair investigation held September 23, 1981.

2. That the Seaboard Coast Line Railroad Company be ordered to compensate Carman A. A. Abercrombie for all time lost, both straight and overtime, plus any loss in fringe benefits such as vacation time, medical and dental coverage, etc. resulting from the 30 days unjust suspension from November 7 thru December 6, 1981.

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 was employed at Carrier's Car Shop in Atlanta, Georgia, with four and one-half years service at the time of the formal investigation conducted on September 23, 1981. Claimant was charged with violation on September 16, 1981, of Rules 1, 12 and 26 of the Rules and Regulations of the Mechanical Department, to wit: failure to work diligently during shop hours; disloyalty, desertion and insubordination; and being absent from his duties without permission from the proper authorities. After the formal investigation, Claimant was found to have violated Rule 12 and was disciplined with a thirty (30) day actual suspension.

The Organization argues on appeal that the Claimant was denied a fair and impartial investigation due to the conduct of the hearing officer. A careful review of the transcript does not support the Organization's position. The Hearing Officer permitted the Claimant's representative to conduct a thorough examination of all witnesses who testified at the hearing. In addition to probing the factual foundations for the charges, the Organization's representative was permitted to ask questions with the objective to develop any improper motives or biases on the part of Carrier's witnesses. The investigation lasted for approximately four hours, and the Claimant was permitted to propound substantive questions of the Carrier's witnesses. This Board finds that the hearing afforded the Claimant was conducted in a fair and impartial manner by the Carrier's representative.

The Organization asserts that the evidence confirmed the fact that Claimant's actions were in accord with the common practice on the property for employee lunch breaks. The Car Foreman testified that he had been told by the Yardmaster that he had 30 minutes to work the ramp before the Yardmaster would have to switch trains. The Foreman also stated that he told the Claimant to work the ramp with another employee, but that the Claimant left the property for his lunch break without permission.

There was no evidence of record that the Foreman told the Claimant that the ramp was available for only a thirty minute period of time. The ramp work assigned Claimant was covered by two employees without a train delay. One of these employees who performed the assigned task testified that he did so at the request of Claimant in order that the latter could take his lunch period.

The General Rule and established practice was for an employee to take his lunch period when he had the opportunity at any time within the fifth hour of the employee's shift. The Claimant's lunch period was normally twenty minutes in length, and the evidence showed Claimant was off the property on September 6, 1981, for a period of approximately twenty-seven minutes.

The evidence further established the fact that the absence of vending machines or other sources of food on the property caused the employees to either bring their lunch or leave the property to secure food. The Charging Foreman admitted that he had on occasion secured his own lunch from employees who left the property to obtain food. Although the General Rule was that the Carmen must take their lunch period within the fifth hour of their shift on the property, the testimony of Carrier's Foreman, Assistant General Foreman, a Car Inspector and two of Claimant's co-employees was that this rule was not universally followed on the property.

From the record it appears that Claimant was assigned a work task, but he had no knowledge of the time limitations within which the task was to be performed. Although the Carrier expected the Carmen such as Claimant to take their twenty minute lunch period during the fifth hour on the property, the demands of service and common practice transformed this general requirement of employee behavior into a guideline for employee activity, rather than a hard and fast rule.

This Board finds that the Claimant did have knowledge, however, that a specified work task had been assigned to him. Under the circumstances, it would have required little effort for Claimant to have inquired of his Foreman whether he could leave the property at that moment in his shift to take his lunch period. A review of the record finds that the Carrier substantiated the charge that Claimant violated Rule 12 of the Mechanical Department.


This Board is of the considered opinion that based upon the evidence of record and common practice then in effect on Carrier's property, the discipline assessed was excessive and an abuse of managerial discretion. The Board orders that Claimant's discipline shall be modified to a fifteen day actual suspension. Claimant shall be compensated for the difference between the amount he earned while improperly withheld from service, and the amount he would have earned on the basis of his assigned working hours during the same period. Claimant's personal record shall be so noted.

AWARD

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest



Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1985.