

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Seaboard System Railroad Company

Dispute: Claim of Employee:

1. That under the current and controlling agreement, Laborer C. H. White, I. D. No. 165188, was unjustly dismissed from the service of the Seaboard Coast Line Railroad Company, on November 12, 1982, after a formal investigation was held in the office of Shop Superintendent Mr. J. A. New, Jacksonville, Florida.

2. That accordingly, Laborer C. H. White be restored to his assignment at West Jacksonville Shops, Jacksonville, Florida, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid, and compensated for all lost time effective November 12, 1982, for each and every day Mr. White is not permitted to protect his assignment at the pro-rata rate of pay, and the payment of 10% interest rate added thereto.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 C. H. White sustained an on-the-job injury to his right foot while moving a load regulator on September 2, 1982. Following the injury the Claimant indicated no problem, was examined by a physician and released to continue work. On the next day, Claimant notified Carrier and marked off before his tour of duty. In the following week Claimant was requested to contact the Shop Superintendent on two occasions.

By letter of September 5, 1982 the Claimant was notified to attend a formal investigation to determine his responsibility if any, for a violation of Mechanical Department Rule 12 in that it was alleged Claimant failed to comply with the instruction to call and was absent without permission.

Claimant was also charged with violating Safety Rules relating to the injury and its cause. As a result of an investigation, Claimant was notified on November 12, 1982 that he had been found guilty and was dismissed from service of the Carrier.

A careful and thorough review of the record indicates that the Claimant was instructed to contact the Shop Superintendent on September 4, 1982. The Claimant failed to contact the Shop Superintendent in response to the September 4th request. On September 7, 1982, the Claimant went to a physician's office. The record indicates that the receptionist called and talked to the Shop Superintendent who states that he requested a conversation with the Claimant. The Shop Superintendent indicated by memorandum that the receptionist stated that the Claimant would not come to the phone. He then asked the receptionist to inform the Claimant to call by 2 P.M.

The Claimant disputes the above events maintaining that he was not informed by the receptionist that the Shop Superintendent wanted to speak to him on the phone. The Claimant states that he was informed later that day to call the Shop Superintendent. He maintains that he did indeed call and talk to the Shop Superintendent, J. C. Davis. That call is disputed by the Shop Superintendent who states for the record that the call never occurred. By long established position, this Board does not decide issues of credibility and is not a trier of facts (see Third Division Awards 9230, 9322, 10113, 21612). On the whole of the record it is clear that the Claimant had been requested on at least two occasions to contact the Shop Superintendent. There is dispute in the record as to whether any contact occurred, but the Hearing Officer concluded that the Claimant had not contacted the Shop Superintendent.

As such, this Board must determine if there is sufficient probative evidence to warrant conclusion of guilt with respect to a violation of Rule 12 in failing to comply with reasonable instructions and the Safety Rule violations. This Board finds that there was sufficient evidence with respect to a violation of Rule 12. In the whole of the case, the record shows sufficient substantial evidence of probative value to warrant Carrier's conclusion of guilt. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305, U.S. 197, 229).

The record before this Board substantiates that the Claimant did not obey reasonable instructions. Such behavior in this industry is tantamount to insubordination and often results in dismissal (Second Division Awards 10336, 10332, 1756). In considering the quantum of discipline this Board has reviewed the Claimant's very poor work record, and cannot find the Carrier's judgment as unwarranted or the penalty excessive. As such, this Board will not disturb the Carrier's action in this case.

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Award No. 10597
Docket No. 10365
2-SSR-FO-'85

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1985.