

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(The Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That the Carrier improperly held Machinist A. J. Alcorn (hereinafter referred to as Claimant) from performing service on January 18, 1982.
2. That, accordingly, the Carrier be ordered to compensate Claimant eight (8) hours at the current Machinist rate.

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.

On January 15, 1983, Claimant contacted the Carrier to inform that he would not be reporting for work that day. According to him, he advised that he would be reporting in the next work day. The Carrier denied that it was informed about the next work day. The Claimant did report to work on the next work day, Monday, but the Carrier refused him permission to work and he was sent away for the day without pay.

The relevant rule concerning absences is Rule 19 of the current agreement which reads:

"(a) An employe desiring to remain away from service must obtain permission from his foreman to do so but if sickness, or other unavoidable cause, prevents him from reporting at his regular post of duty, he shall notify the foreman as promptly as possible. Failure to do so places employe liable to discipline.

"(b) An employee who has been absent from duty for any cause shall notify his foreman of his intention to return to work before the end of his regular shift on preceding days."

The Organization also contends that Rule 32, the disciplinary rule, is relevant in that it views the Carrier's action as discipline administered without an investigation. That rule reads:

"(a) An employee who has been in the service more than sixty (60) days, or whose application for service has been formally approved, (employees to be notified of such approval) shall not be disciplined or dismissed without an investigation."

Much of the Submission of both parties concerns whether or not the Claimant notified the Carrier of his intention to return to work as per Rule 19(b). This part of the arguments is misguided. The Organization focused on the correct issue when it raised the lack of disciplinary hearing.

The Carrier's intention is stated on a Notice of Absenteeism issued to the Claimant. On the side of the notice are the statements that "Mr. Alcorn did not state his intention to return to assigned shift on Monday morning Jan 18 as claimed. He was absent three times in January and was sent home Jan 18th as per Mr. McCurdy's instructions to correct absenteeism and tardiness." In the Carrier's Submission it states that "In view of the fact that the parties provided in their Agreement Rule 19(b) that an employee who has been absent for any reason should inform his foreman of his intent to return to work before the end of his regular shift on the preceding day, Carrier's action in withholding Claimant from work for failing to so notify his foreman is not a disciplinary matter but rather it was compliance with Rule 19(b)."

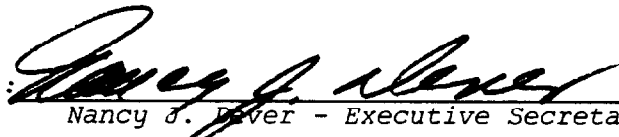
In fact, Claimant was given a one day suspension for his absence. There is nothing in Rule 19(b) that allows the Carrier to ignore the mandates of Rule 32 when it administers discipline. The fact that there is dispute between the parties as to whether or not Claimant met his duty Rule 19(b) highlights the fact that an investigation aimed at developing relevant facts is necessary. The Carrier was in contractual error in its action.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1985.