Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10786
SECOND DIVISION Docket No. 10848
2-NIRC-CM-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Northeast Illinois Regional Commuter Railroad Corporation

Dispute: Claim of Employes:

1. That the NIRCRC violated the current Agreement Rule 34(g), when as a result of a hearing held on February 8, 1984 assessed Coach Cleaner B. J. Means with a five (5) day actual suspension from service beginning March 5, 1984 through and including March 9, 1984.

2. That the NIRCRC be ordered to compensate Coach Cleaner B. J. Means in the amount of eight (8) hours pay for each of the five (5) days that he was unjustly suspended from service beginning March 5, 1984 thru March 9, 1984.

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 Transcript of the Investigation in this dispute simply shows, excluding the redundant positioning at the Investigation by the Claimant's Representative that the notices of postponement (each of two postponements

specified days.

He was regularly assigned 8 A.M. to 4 P.M., rest days Saturday and Sunday, in the Carrier's Western Avenue Coach Yard and scheduled to work on December 30, 1983, January 3, 4 and 5, 1984 but he did not do so.

On December 30 he called in at 7:30 A.M. and told the Relief Foreman that he would not be in. When asked the reason, he said he had car trouble and that he was "going to insurance." The Claimant later testified that his absence that day was due to discovery at 9:45 P.M. on December 29 that his car had been stolen and recovered at about 10:00 P.M. or a little after, found it to be damaged but drove it to the police station.

During the morning of January 3, the Claimant called in to the Assistant Foreman, said he would not be in because someone had hit his car and that he had a problem with it.

Later in the day the Claimant called in and again said he would not be in to work on the 4th and the 5th for on the 4th he had to go to the police and on the 5th he had to go to his insurance company.

The Claimant testified that he missed the 4th because "there is only one member in my household and that's me and I had to take care of it myself." His response for being absent on January 5th was: "The reason is the same."

When asked if he could have taken public transportation to work when he realized that he was having difficulty in placing his car in the shop, he answered "yes", but added: "That is the reason I took off, because I had to take public transportation. Like I said, I took off to put my car in the garage and I had to do all the work myself." The Claimant further testified that he took his automobile to the repair shop on January 6 after his shift ended on that date.

In the ensuing testimony, the Claimant admitted that he had a responsibility to the Company to protect his assignment and that doing so was among his highest priorities.

Following the initial testimony of the Claimant, General Rule 1 of the governing Schedule Agreement between the parties was read into the record by the Claimant at the request of the Investigating Officer. Essentially, the Rule provides that eight hours shall be the regular work day and that forty hours shall be the regular work week.

The Claimant's Representative objected and contended that Rule 23 of the Agreement should have been read into the record by the Claimant. It was quoted by the representative. It reads:

> "An employe detained from work on account of sickness or for any other good cause, shall notify his foreman as early as possible."

The Notice instructing the Claimant to attend Investigation reads in pertinent part:

> "CHARGE: Your alleged failure to protect your assignment in December, 1983 and January, 1984 on the following days:
>
> December 30, 1983 - Friday
> January 3, 1984 - Tuesday
> January 4, 1984 - Wednesday
> January 5, 1984 - Thursday

The Notice of Discipline dated February 27, 1984 reads:

> "Full consideration has been given to the testimony developed at the formal hearing held on February 8, 1984 in Mr. Thomas' office at the Western Avenue Coach Yard in connection with the charges of which you were advised in notice dated January 1, 1984.
>
> As a result of your failure to protect your assignment on December 30, 1983, January 3, 1984, January 4, 1984, and January 5, 1984, please be advised as follows:
>
> Accordingly, you are accessed (sic) with a 5-day actual suspension beginning Monday, March 5, 1984. You are to return to work on March 12, 1984."

The Organization has based its position on three points; i.e., that the Notice of Investigation did not contain a precise charge; the Carrier did not meet its burden of proof and that the discipline assessed was excessive.

The Board finds that the Notice was sufficiently precise as to afford the Claimant and his Representative the opportunity to prepare an adequate defense on his behalf.

While the contention that the Claimant did not receive a precise charge was discussed on the property, a through review of the on-the-property correspondence does not disclose any showing that the burden-of-proof contention was. It makes its first appearance in the Organization's written submission to the Board. The contention and argument in support thereof comes too late for this Board to properly give it further consideration.

We do note that the Organization charges that the Claimant had been unfairly suspended and that he had not been justly dealt with, arguing that he notified the Carrier that he would be unable to protect his assignment, that the Supervisors did not state that the reasons he gave were not acceptable and that he had never been counseled about his being absent from work.

The Transcript of the Hearing process shows that the Foreman with whom he talked in the afternoon of January 3 told him that when he came back to be sure to bring a good excuse for being absent. The Foreman testified that the Claimant said "okay." When an employe calls in and said he was not going to be in, there appears that the Foreman had little recourse except to respond as the Foreman in this instance did. It then becomes incumbent upon the employe to bring in a good reason. In this instance, it is obvious that the Carrier's Officer assessing the five-day suspension considered the explanations offered by the Claimant as not being acceptable. The employer has the right to expect every employe to report for work and work all of the scheduled hours on every regularly scheduled work day.

We do not consider the discipline assessed as punishment as asserted by the petitioner, nor do we consider that counseling about his being absent was required if this were in fact the first occurrence. The suspension involves some degree of force or outward influence to make the Claimant conscious of his shortcomings in this instance and hopefully deter him from repeating his mistake.

The evaluation of the witnesses and their testimony as well as the Claimant recognizing his responsibility by the Officer duly designated to assess discipline will not be disturbed.

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 19th day of March 1986.