

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: (
(Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement Carman W. C. Cosby, Birmingham, Alabama, was unjustly suspended from service March 9, 1983 through April 7, 1983.

2. That accordingly, the Carrier be ordered to pay Carman W. C. Cosby for all time lost while suspended from service.

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 were given due notice of hearing thereon.

The Claimant was instructed to attend formal Investigation and charged with failure to properly report a personal injury and with failure to correctly report off on the nights of February 2, 3, 5, and 8, 1983.

The Claimant testified that on the night of February 1, he got something in his eye and thought it to be minor. On the night of February 2, he called in sick due to his arm hurting. He called in sick for the same reason on the night of February 3. On February 4 he worked.

On February 5 he said he called in sick about his eye because it was completely closed. On this particular occasion, he talked with the General Foreman. The General Foreman testified that the Claimant said nothing about his eye but reported off due to chest cold and also said his shoulder was hurting.

In his subsequent testimony, the Claimant continued to insist that he reported off due to his eye, for he had made an appointment on February 5 to see a doctor on February 7. The statement from the Doctor presented by the Claimant indicated that he was ill with tendonitis of the shoulder on February 2 and 3.

The Claimant also testified that he started taking medication for his eye on February 2, applied the medication on February 3 and at work on February 4.

The Claimant visited another doctor on February 9. The statement from that doctor showed that the patient had an eye infection of severe nature and would not be able to return to work at least through February 14, 1983.

The Claimant did not make out an accident report until February 10 subsequent to seeing the Carrier's doctor on that date.

Following the Investigation the Claimant was informed that he was found guilty of failure to properly report a personal injury, that his waiting seven days to do so was inexcusable. The Claimant was also notified that the doctor's excuse for his absences on February 2 and 3 matched the explanations he gave for those two days. He was also found guilty of failure to properly report off for the night of February 5, stating initially that he had a chest cold when at the Investigation he testified that he was off duty due to his eye being swollen shut as a result of the injury to his eye.

The Organization has argued unpersuasively that the Carrier violated Rule 34 in that the Claimant was not proven guilty of the charges, that the thirty day suspension was arbitrary and capricious.

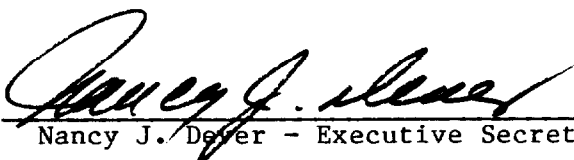
As we have previously held, numerous Awards of this Board have established the principle that in discipline cases the Board will not substitute its judgment for that of the Carrier unless the employees and/or their Representatives are able to produce substantial evidence of probative value that the Carrier has abused its discretion by proceeding in an unfair, arbitrary, or capricious manner. We reaffirm that principle in this dispute.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.