

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it unjustly and unfairly dismissed Assistant Electronic Maintainer John R. Castillo on June 24, 1983 for alleged falsification of a timesheet, and alleged absence from duty without proper authority.

2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Assistant Electronic Maintainer John R. Castillo whole by reinstating him to service with all seniority and other rights unimpaired and compensating him for all lost wages (including lost interest thereon) and benefits and clearing his record.

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.

This dispute grows out of a charge by the Carrier against the Claimant for alleged falsification of his timesheet and being absent without proper authority. The timesheet was for the third pay period in April 1983. The absences were May 11, 12, 13, 16, 17, 18, 19 and 20, 1983.

Before reaching the merits, we must address the procedural objections raised by the Organization.

The principal charge is that the Investigation was not fair and impartial because the Notice given to the Claimant was not addressed to the Local Chairman. And that since the Local Chairman was not given a copy of the Notice at least five days prior to the Investigation, the charges against the Claimant should be dismissed and that he be reinstated and paid for actual wage loss, citing Rule 36 for the latter.

The Carrier admits the oversight. In defense, the Carrier's position is that the Local Chairman was present at the Investigation, and did not protest the oversight. Rule 35, the Investigation Rule, stipulates that a copy of the Notice shall be given to the Local Organization Representative and the General Chairman. A copy of the Notice was addressed to the General Chairman.

We note that the Local Chairman was present and that he participated in the Claimant's behalf. Thus, "a duly authorized representative" was present as is called for in the Rule. We hold that the omission is not sufficient to rescind the discipline assessed.

To assist in avoiding prolonged controversy over technicalities, the Carrier would be well advised to insure that the Notice requirements of the Rule are adhered to.

The Organization has also charged that Rules 700 and M-702 cited in the Notice of Dismissal were not cited in the Charge Notice. This is true; however, we find no requirement in Rule 35 that an employee be charged with violating a specific Rule in the Notice. In this instance, the Rules were read to the Claimant during the course of the testimony and he acknowledged having read them previously.

The transcript of the accorded Investigation discloses that the Claimant did indeed submit his timesheet for the third pay period for forty hours of pay when he actually was not present for his assignment. He filled it in, personally affixed his signature and in what is reported to be established practice, also signed the Supervisor's name to the timesheet and submitted it for pay purposes. He was paid for that time, but it was later recovered from his last pay check.

Where employees report their own time, a matter of absolute trust is involved. They are either trustworthy or they are not. There is no inbetween.

As to the Claimant's absences, he testified that he was tied up with illness or personal domestic problems but that he did call in or had a friend do so, perhaps on five days out of eight and on two days, he said he was too ill to call in himself. Evidence in support of his illness is not apparent in the record made available to the Board. He offered to explain his domestic problems but he was not asked to do so. Domestic and personal problems are ordinarily not sufficient reasons for unauthorized absences.

It has been held many times by the Board that every employee has an obligation and a duty to report on time and work his scheduled hours, unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence. No employee may report when he likes or chooses when to work. No Railroad can be efficiently operated for long if voluntary absences are tolerated.

At the conclusion of the Investigation, the Claimant's Representative, the Local Chairman, stated that the Claimant had worked very hard and expressed the hope that the party or parties reading the Investigation transcript take into consideration the amount of hours and time the Claimant had put in. He then expressed the further hope that if there is any action to be done he hoped it would be "very, very lenient."

The Investigating Officer's closing question and the Claimant's response reads:

"Q178. Do you feel that you were afforded a fair and impartial hearing and that you were treated in a gentlemanly like manner during these proceedings?

A. Yes, I think I got a fair hearing. I would like to add that things are looking better for me domestically and I would like to say that I do not wish to lose my job and that whatever decision is made, its made. Thank you."

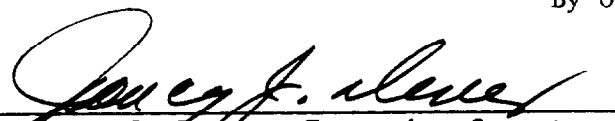
It is not within our authority to remit or modify the discipline assessed in any manner unless the record shows and the Organization has proved that the Carrier abused its managerial discretion. The record does not so disclose. The Claimant's contractual rights were not aborted in this proceedings. The dismissal will not be reversed.

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 25th day of June 1986.