

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: ((International Brotherhood of Electrical Workers
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company improperly withheld Electrician D. L. Davis from service, commencing December 31, 1984 prior to holding an investigation in accordance with Rule 24 of the current Agreement.

2. That the Missouri Pacific Railroad Company unjustly suspended Electrician D. L. Davis from December 31, 1984 through February 28, 1985.

3. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician D. L. Davis for eight (8) hours each work day, Carrier withheld him from service, plus eight (8) hours at time and one-half for December 31, 1984 and January 1, 1985 holiday pay which the Carrier denied him the right to qualify for under the Agreement.

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 in this case is an Electrician employed by the Carrier at Carrier's Diesel Repair facility at Fort Worth, Texas. He has an Electrician's Seniority date of November 19, 1980, but an actual service date of November 5, 1974. His assigned working hours are 3:30 P.M. to 11:30 P.M.

On December 30 at approximately 3:30 or 3:40 P.M. he informed his Foreman of his desire to lay off at 8:30 P.M. His Foreman answered as follows:

"At this time I acknowledged this and told him to let me or one of the other Foremen in the office to know when he would be laying off."

Sometime between 4:30 and 5:15 the Claimant was assigned to another Foreman. The Claimant contends that he also asked this Foreman for permission to lay off at about 8:30 P.M. and that he was granted that permission. The Foreman acknowledges the fact that Claimant did ask for permission to lay off, but denies granting such permission and said that he replied he couldn't spare him as they were already short two Electricians. At any rate the Claimant did leave the property at about 8:30 P.M.

On date of January 2, 1985, the Carrier sent the following Notice to the Claimant:

"D. L. Davis, Electrician

Report to the Office of the Master Mechanic, Centennial Yard, Fort Worth, Texas, at 10 a.m., Friday, January 4, 1985, for a formal investigation to develop the facts and place your responsibility, if any, in connection with the report that on December 30, 1984, at about 8:40 p.m., you allegedly left company property without proper authority, after being instructed by Foreman J. R. Corbin that you could not, while you were working as Electrician, with assigned hours of 3:30 p.m. until 11:30 p.m.

If you desire witnesses or representatives, you must arrange therefor in accordance with your applicable scheduled working agreement.

You are being withheld from service pending formal investigation."

The Investigation was held as scheduled and on January 8, 1984, the Carrier informed Claimant in writing that he had been assessed an actual 60 day suspension starting with December 31, 1984, and ending February 28, 1985.

The facts in this case are simple but in dispute.

The Organization contends that Claimant's personal record with the Carrier was unblemished until this particular incident. Claimant had an excellent work and attendance record with the Carrier. This at least does not seem to have been disputed by the Carrier.

The Claimant alleges that he had permission from both Foremen to layoff that evening; both Foremen deny it, but both agree that he did ask that permission.

When the Claimant informed Foreman Stute that he wished to layoff at about 8:30 P.M., testimony by Foreman Stute shows he answered as follows:

"At approximately 3:30 P.M. while assigning Mr. Davis his work load he expressed to me his desire to lay off at 8:30 P.M. At this time I acknowledged this and told him to let me or one of the other Foremen in the office know when he would be laying off."

This would indicate that the Foreman might give him that permission but wanted to wait a while to see how badly he was needed before giving that permission; however the Claimant may have believed it was permission. Claimant went under another Foreman at about 4:30 P.M. who agrees that Claimant did ask such permission, but flatly denied giving any such permission.

In regards to this conflicting testimony, it has been long established that this Board does not resolve such issues as credibility between witnesses and we shall not do so now.

Carrier contends that Claimant was insubordinate and left the property without permission. We do not see any insubordination, it could well have been a misunderstanding. Also an employee with approximately a 10 year unblemished record is not very apt to be insubordinate. We do find that he did leave the property without permission.

The Organization contends that when the Carrier held Claimant out of service pending the Investigation that was an improper act. We agree. We can see no reason at all to hold the Claimant out of service these three days. We will sustain that part of the Claim. We also feel that a 60 day suspension for an employee who left the property without permission for 3 hours, and apparently only once in 10 years, is far too harsh a penalty. We will reduce the penalty to 15 days, none of which can be counted before the date the Investigation was held.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.