

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Kansas City Southern Railway Company
(Louisiana & Arkansas Railway Company

Dispute: Claim of Employees:

1. That the Kansas City Southern-Louisiana & Arkansas Railway Company violated the Railway Labor Act when Carman S. McDonald was not permitted to work on the dates of April 29, 30, May 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, and 27, 1985, and lost eight (8) hours pay per day.

2. That the Kansas City Southern-Louisiana & Arkansas Railway Company be required to make S. McDonald whole by removing all reference to this suspension from his personal record and pay him eight (8) hours pay at the proper pro rata rate for the dates of April 29, 30, May 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24 and 27, 1985 and remove all reference of this discipline from the personal record of Carman Sam McDonald.

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.

Claimant had been in Carrier's service from October 1, 1969. At the time of the occurrence giving rise to dispute herein, Claimant was employed as a Carman at Shreveport, Louisiana. On March 7, 1985, Claimant was notified by Carrier's Assistant Superintendent Car Department to appear for an investigation for allegedly not protecting his assignment.

By agreement, the Investigation was postponed and conducted on March 21, 1985, with Special Representative of Car Department as Conducting Officer. A copy of the Transcript of the Investigation has been made a part of the record. We have reviewed the Transcript and find that the Investigation was conducted in a fair and impartial manner. We find no proper basis for the contention that the charge against Claimant was vague and imprecise. It advised Claimant in clear language what the Investigation was about:

"...your failure to protect your job assignment and being absent from work without permission February 27, 28, and March 1, 1985."

There is no requirement that a specific rule be cited in a Letter of Charge. The charge was sufficiently precise to enable the Claimant and his Representative to prepare a defense. It met the requirements of the Agreement.

The multiple roles of the Assistant Superintendent Car Department, as the Charging Officer and the first Appeal Officer, after testifying in the Investigation, in no manner deprived Claimant of a fair hearing, nor denied him the appeal process, especially as further appeal was made to higher Officers than the Assistant Superintendent Car Department.

Following the Investigation conducted on March 21, 1985, Claimant was assessed discipline of thirty days suspension from service by letter dated April 22, 1985.

Rule 15 of the applicable Agreement, which was read into the Investigation, reads:

"RULE 15
Absence From Work Without Leave

"In case an employee is unavoidably kept from work, he will not be disciplined. An employee detained from work on account of sickness, or any other good cause, shall notify his foreman as early as possible."

In the Investigation there was substantial evidence adduced by the Car Foreman and the Assistant Superintendent Car Department, that Claimant was not present for work on the dates involved in the Letter of Charge, nor were they made aware of the reason for his absence. The Claimant contended in the Investigation that his wife called the Car Foreman and the Assistant Superintendent Car Department and advised that Claimant would be unable to protect his assignment on February 27, 28 and March 1, 1985. The Car Foreman and the Assistant Superintendent Car Department denied having received any notice from Claimant's wife that Claimant would be unable to protect his scheduled work assignment on the dates involved.

While there were conflicts between the testimony of Claimant and the testimony of the Car Foreman and the Assistant Superintendent Car Department, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Conflicts in evidence do not warrant disturbing the Carrier's action.

The Claimant contended he was ill because of a rash. There is nothing in the record to indicate that Claimant was disabled to the extent that he was unable to personally contact supervisory personnel on the dates involved.


We find no proper basis to interfere with the discipline imposed by the Carrier. See Second Division Award Nos. 9972 and 6710.

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 7th day of January 1987.