

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

(International Association of Machinists and Aerospace
(Workers
Parties to Dispute: (
(Southern Railway Company

Dispute: Claim of Employees:

1. That the Southern Railway Company violated the Controlling Agreement, Rules #30 and 34, but not limited thereto, and were arbitrary, capricious and discriminatory, when they unjustly suspended Machinist G. D. Savage, Chattanooga, TN., from service for thirty (30) calendar days without pay beginning July 21, 1984 and ending August 19, 1984.

2. That accordingly, the Southern Railway Company be ordered to pay Machinist G. D. Savage for all lost time wages, with all his rights unimpaired and clear his record of the charge.

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 employee 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.

Claimant herein was subjected to a 30 day suspension for excess absenteeism, being late and/or leaving work prior to the completion of the shift on:

| | |
|-------------------------|-------------------------|
| 6/10/84 - Went in early | 6/14/84 - Absent |
| 6/23/84 - Went in early | 6/24/84 - Went in early |
| 6/30/84 - Late | 7/06/84 - Absent |

The applicable provision of the Agreement provides in part:

"RULE 30. (a) In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

(b) The provisions of paragraph (a) shall be strictly complied with. Excessive absenteeism (except due to sickness under paragraph (a) above) and/or tardiness will not be tolerated and employees so charged shall be subject to the disciplinary procedures of Rule 34.

(c) An employee in service who fails to protect his assignment due to engaging in other employment shall be subject to dismissal.

RULE 34. (a) An employee will not be removed from service or disciplined (including discharge) except for just and sufficient cause after a preliminary hearing. This does not apply to new employees removed from service within sixty (60) days of hire, account failure to approve application for employment.

(b) During the preliminary investigation (the discussion of events leading to any disciplinary action), the right of an employee to be accompanied by his duly accredited representative (local chairman or committeeman) should he so desire, and provided he is readily available, is recognized. Any discipline assessed at the preliminary investigation will be confirmed by letter addressed to the employee (with copy to his local chairman) within five (5) days from the date thereof which shall include the specific reasons for the assessment of such discipline.

(c) If such employee disagrees with the disciplinary action taken, he may himself, or through his duly accredited representative, request a formal investigation: such request shall be submitted in writing within five (5) days from the date of written confirmation of the assessment of discipline given the employee under Section (b) above. If such request is made verbally at the time discipline is assessed under paragraph (b) above, the imposition of the discipline will be held in abeyance pending the completion of a formal investigation; provided such verbal request is confirmed in writing within five days thereof. However, discipline will not be held in abeyance in any case involving a major offense.

(d) Formal investigation, if requested under Section (c) above, shall be held within five (5) days from the date request therefor is made and it shall be conducted by a carrier officer superior in rank to the officer assessing the discipline to determine the propriety thereof. At such investigation the employee(s) involved shall be entitled to assistance of his duly accredited representative(s). The Carrier officer conducting the formal investigation shall receive all evidence, including testimony or statements of witnesses concerning the act or acts upon which the discipline was based, and he shall render a decision affirming, modifying (by increasing or decreasing) or revoking the prior disciplinary action. Such decision shall be rendered within ten (10) days following the date on which such formal investigation is completed."

Based upon evidence adduced at the preliminary Investigation, Claimant was dismissed from service, however, the dismissal was held in abeyance pending the outcome of a formal Hearing which was timely requested by the Claimant. The formal Investigation resulted in a confirmation of the finding of guilty of the charges originally cited against the Claimant, however, the disciplinary action was modified from that of dismissal to a thirty (30) calendar day suspension without pay.

The gist of the Claimant's position on appeal is that the testimony and supporting evidence shows that Claimant was absent, late or left work early for a good cause, and was unavoidably kept from work due to personal illness, personal business and problems, and the illness of a family member.

Carrier's position is that the facts show that Claimant's absences, tardiness, and leaving early are unjustified in the face of the employee's obligation to work, and the Controlling Agreement.

It is well settled that in disciplinary cases, the Carrier has the burden of establishing by clear and substantial evidence that the employee is guilty of the charges lodged against him. The function of the Board is to review the record, ascertain whether the Controlling Agreement had been complied with, that the Claimant had been afforded the protection of due process, that there was substantial evidence to sustain a finding of just and sufficient cause for the discipline imposed, and that the action taken by the Carrier was not arbitrary, capricious, nor unreasonable. Second Division Award 6368.

The only matters in dispute are the measure of the evidence, and the disciplinary action taken by the Carrier.

There is no factual dispute regarding the accuracy of the days in question, and the record clearly shows that Claimant, by his own testimony, was absent, tardy, or left early for reasons not contemplated by Rule 30(a) and (b) of the Controlling Agreement.

In applying the alleged exculpatory clause, ". . . absenteeism . . . , due to sickness . . . , and tardiness . . . ," the Carrier is faced with the problem of balancing the competing interest of legitimate employee absences and the need to have a stable and productive work force. This Board has respectively held that the Carrier is entitled to have an employee who is present on the job and to expect reasonable attendance by its employees, and that the interests of the other employees and the Carrier, in operating a productive and profitable enterprise, must outweigh the personal interests of the individual employee experiencing attendance problems. See Second Division Awards 7348 and 6710.

The Claimant's own testimony, as contained in the record, clearly shows that his absences on the days in question were for personal reasons and not within the meaning of the exculpatory clause. The Carrier met the standard of proof as shown by the evidence in the record.

The record shows that the discipline imposed by the Carrier was in keeping with the Claimant's record with the Carrier, and accordingly will not be disturbed by this Board.

For the reasons cited herein, this Board must deny the Claim.

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 21st day of January 1987.