

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (Seaboard System Railroad)

STATEMENT OF CLAIM:

1. That CSX Transportation, Inc. violated Rule 30, but not limited thereto, of the current agreement when it unjustly suspended Machinist W. C. McClendon for 5 days following an investigation held on June 11, 1985.

2. That accordingly, CSX Transportation be ordered to compensate Mr. McClendon for all pay and benefits lost (made whole) as a result of said suspension and remove all reference to the charges from 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 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.

The Claimant was employed by the Carrier in its shop in Atlanta, Georgia, since 1969, suffered a neck injury on June 21, 1984, while inspecting a locomotive. He was treated by the Carrier's physician, placed on light duty for a few days, and then released. The Claimant continued to experience neck pain, however, and periodically complained to his Supervisor that he required additional medical treatment. His Supervisor subsequently advised him to visit his personal physician to confirm if a medical problem did, indeed, exist. The Claimant's physician initially recommended that he remain on the job and begin a regimen of therapy. However when no noticeable improvement was evident after several months of treatment, the physician recommended that the Claimant temporarily discontinue working in order to receive medication and therapy on a daily basis.

The Claimant notified the General Foreman of his physician's advice on March 12, 1985, and was subsequently granted vacation for the period of March 12-16, 1985. On March 18, 1985, the Claimant contacted the Foreman to advise him that his physician had not yet released him to return to work. The General Foreman indicated that the Claimant should submit a completed 7300 form from his physician, attesting to the nature of the medical problem. On March 27, 1985, the Claimant also received a certified letter from the Master Mechanic, requesting that he return the completed 7300 form to the Carrier within 10 days from the date of the letter.

Although the Claimant attested to having submitted the form to his physician promptly, the physician did not return the completed form to the Carrier within the designated 10 day period. As a result, on April 29, 1985, the Carrier charged Claimant with:

"...being absent without proper authority since March 19, 1985, and your failure to comply with Mr. Jones' instructions in his letter to you dated March 27, 1985, requiring you to furnish his office with Form 7300 from your personal physician.

You are charged with violation of Agreement Rule 19, and Rule 7 of Rules and Regulations of the Mechanical Department which state 'Employees must not absent themselves from their duties without proper authority,' and you are charged with that portion of Rule 3 of the Rules and Regulations of the Mechanical Department which state, 'dishonesty,...desertion,... insubordination will subject the offender to dismissal.'

On June 11, 1985, a hearing was held on the charges. At that time, the Claimant produced a 7300 form from his doctor, dated April 1, 1985, along with a written statement from the physician, explaining that the delay in furnishing the information was due to his own heavy work load. The physician's statement did not mention when the form had been furnished by the Claimant, nor did the Claimant testify as to when he had received the completed form from the physician. The Claimant was subsequently found guilty of being absent without proper authority, and with failure to furnish a 7300 form from his physician. He was notified by letter on June 27, 1985, that he must serve a 5 day actual suspension, from June 28-July 3, 1985.

It is clear that the Claimant's 7300 form was not filed in a timely manner. The bulk of the responsibility for this delay appears to rest with the Claimant's physician, whom in written testimony presented before this Board, admitted to failing to meet the designated deadline for the submission of the form. However, it must also be noted that there is no evidence that the Claimant aggressively pursued obtaining the necessary medical excuse from the physician, but rather let the deadline go by without ascertaining that the doctor had complied with the Carrier's requirement. Further, the Claimant did not produce the completed 7300 form until the hearing on June 11, 1985, although the form was dated April 1, 1985.

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89-2-86-2-153

Based on the evidence presented the Board directs that the 5 day actual suspension be reduced to a Letter of Reprimand to be placed in the Claimant's permanent file and that he be made whole for all wages lost during the five (5) day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.