

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

(International Association of Machinists and Aerospace
(Workers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation (AMTRAK) violated Rule 24 of the scheduled Agreement dated September 1, 1977, but not limited thereto, when it arbitrarily and capriciously assessed Machinist Kenneth Johnson, thirty (30) days suspension following investigation for allegedly activating a thirty (30) days deferred suspension for insubordination and absence without permission.

2. That accordingly, a decision should be reversed, Machinist K. Johnson be made whole for all losses and his record cleared of any reference to 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 waived right of appearance at hearing thereon.

In February or March, 1986, the Claimant's pregnant wife was experiencing complications with her pregnancy. The Claimant, a first shift employee, requested and was granted a change of shift to the third shift. This change of shift was expected to assist the Claimant in providing the necessary care and attention to his wife. On July 10, 1986, the Claimant informed his immediate supervisor that he would have to leave work at 4:00 A.M., as his wife's condition required his presence at home. Permission was granted; however, shortly before his departure at 4:00 A.M., the General Foreman advised the Claimant that he would not be permitted to leave work and directed the Claimant to complete his tour of duty. However, the Claimant left the property at 4:00 A.M. On July 18, 1986, the Claimant was notified by letter to report for formal investigation due to his failure to follow the afore-

mentioned directive on July 10, 1986, for leaving work early on July 10, 13, 15, and 17, 1986, for being AWOL on July 14, 1986, and for being absent on July 16, 1986.

It was developed at the Hearing by a witness for the Carrier that there was no procedure on the property to obtain permission to leave work early; that an employee merely notifies his Supervisor of his intention to be absent. Consequently, the Hearing Officer dropped the charges against the Claimant that related to July 10, 13, 15 and 17.

The Organization claims that the conduct of the General Foreman in denying the Claimant permission to leave the property on July 10, forced the Claimant to make an unnecessary and unwarranted choice between his wife and his assignment. The Organization accuses the General Foreman of being arbitrary and capricious in denying the Claimant permission to leave on July 10, 1986. This allegation is based on the fact that the Claimant's immediate Supervisor had already granted said permission. The Organization points out the General Foreman's vindictiveness by threatening the Claimant with pulling him out of service if he left the property. The Organization argues that there is no indication that the Claimant was either detrimental to himself or to any other person and that pulling him out of service was not necessary, but vindictive. Finally, the Organization states that there is no provision in the Agreement that permits the Carrier to order or hold an employee at work who has an emergency at home.

The Organization challenges the charges that the Claimant was AWOL on July 14, 1986. This challenge is based on the fact that there is no contractual derivative for the term AWOL. The Organization points to the fact that in the course of the Hearing, the Claimant testified that he had attempted to notify the Carrier without success in that there was no answer at the power desk at the time that he telephoned.

The Claimant's absence on July 16, 1986, was attributed to an emergency related to his wife and notification had been given to the Carrier. On these facts, the Organization deems the inclusion of this absence as the basis for suspension as unwarranted.

While noting that the General Foreman was not the Claimant's immediate supervisor, the Carrier states that the General Foreman did, in fact, have jurisdiction over the Claimant and that his immediate supervisor on July 10, 1986, was a substitute Foreman. The Carrier relies on Rules "O" and "L" above, in assessing the suspension. The Carrier points out that there was no immediate danger to the Claimant that would warrant him not to obey a direct order of the General Foreman. Therefore, the Claimant was obligated to carry out his assignment and obey the orders of the General Foreman. The Carrier also rejects the Claimant's resort to self-help and his failure to exercise his rights under the grievance procedure.

Regarding the Claimant's absences on July 14 and 16, 1986, the Carrier notes that both absences were without authorization. The Carrier argues

that the Claimant's situation at home does not justify insubordination on the job and unauthorized absences. To avoid these, the Carrier points out the fact that it cooperated with the Claimant in changing his shift.

While the record indicates that the Claimant may have initially been unsuccessful in his attempts to notify the Carrier of his intended absence on July 14, 1986, there is no evidence to indicate that the Claimant was deprived, for whatever reason, from continuing his attempts to notify the Carrier of his absence. This is in contrast to the Claimant's absence of July 16, 1986, wherein notification was given and received.

The main question before the Board is the Claimant's insubordination of July 10, 1986. It is a well-established rule of Labor Relations that absent questions of health and safety, an employee is to obey now and grieve later. This well-established rule has been adopted and incorporated by the parties herein. On its face, the General Foreman's instructions to the Claimant to remain on duty appear reasonable. However, the Claimant was relying on the fact that he had already been granted permission by his immediate supervisor and that permission was being countermanded by the General Foreman. The Claimant was also confronted with the fact that the General Foreman gave him no objective reason for countermanding the granted permission. There is nothing in the record to indicate that the Claimant's continued presence was necessitated by a pressing workload. While the Board rejects the Organization's argument that there is no provision of the Agreement that permits the Carrier to order or hold an employee at work, it does acknowledge circumstances under which employees can and should be permitted to leave the property. At this particular facility, it was acknowledged by a Carrier Supervisor that there is no procedure for requesting permission to leave work early; that an employee merely has to inform his supervisor of his intentions to leave. While this practice may be common and acceptable at that facility, there is no doubt that workload and production needs could alter it on an individual basis. As no such needs were articulated by the General Foreman, the Organization's argument that he acted unreasonably may have merit. His holding the Claimant out of service without a showing of detriment to the Claimant or others enhances this argument. It was most unfortunate, as the record indicated, that a shop steward was not on duty on the morning of this incident. The General Foreman's predetermination and the Claimant's anxiety set the stage for the confrontation that followed. Regardless of the practices at the facility that permit employees from taking time off, an employee's obligation to work his scheduled shift is paramount. The Board acknowledges that at times this obligation is countervailed by other situations, such as those faced by the Claimant. Knowing full well that he was going to leave the property in defiance of the General Foreman's directive, the Claimant should have resorted to reason rather than belligerence. Had he, or if possible, his steward, inquired of the General Foreman the necessity for the directive, both the Hearing Officer and this Board may have had a more sympathetic understanding toward the Claimant. It is the hope of this Board that the Claimant understands that his personal problems do not justify insubordination and unauthorized absences. At the same time, the Board would hope that the actions of the

General Foreman would be based on objective and not subjective reasons. On its face, it appears that the General Foreman acted subjectively. The axiom of two wrongs do not make a right applies here.

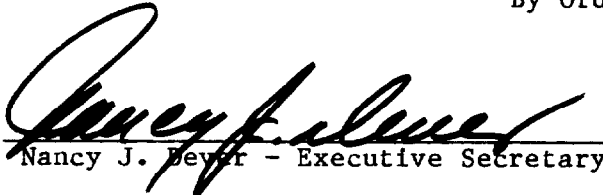
Consequently, the Board finds that the thirty (30) day suspension assessed the Claimant was excessive. The Claimant will be made whole for all lost wages from July 18 through August 7, 1986.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1989.