Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11789
Docket No. 11625
89-2-88-2-143

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe, and Iron Range Railway Company violated the terms of our Current Agreement, when they arbitrarily suspended Carman D. J. Wayt from work for a period of three (3) days as a result of investigation held August 19, 1987.

2. That, accordingly, the Duluth, Missabe, and Iron Range Railway Company be ordered to compensate Carman D. J. Wayt in the amount of eight (8) hours pay for his rate and class for each day he was withheld from service and that his personal record be cleared.

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.

An Investigation was held on August 19, 1987 to determine whether Claimant violated two (2) Carrier Rules on July 31, 1987, when Claimant failed to report for duty at his designated time. He did not report for duty until about forty-five (45) minutes after the start of his tour at Carrier's Keenan Yard and another carman was called to complete his assignment. The Rules cited by Carrier were the Rules of the Car Department, Code of Conduct General Rule 3 and Car Department Notice 87-12. Based upon the lengthy investigative record, Carrier concluded that Claimant violated said Rules and he was assessed a penalty of three (3) days suspension. This disposition was appealed in accordance with the applicable procedures of the Agreement.

In defense of his petition, Claimant asserted that said Rules were inapplicable to his specific situation since he did not absent himself from duty or exchange duties with another employee. Thus the Code of Conduct General Rule 3 did not apply. He also argued that he did not desire to be absent and consequently the twenty-four (24) hours notice requirement of Car Department Notice 87-12 was not germane to his circumstances. He observed that because he set his alarm clock in the wrong mode he unfortunately overslept until 11:10 P.M. and then hastened to report to Keenan Yard. Moreover, since he did not have a telephone, and did not want to waste time enroute by stopping to apprise Carrier's officials of his predicament, he noted that he headed directly for work. In effect, it was his position that Rule 18 of the Agreement was indeed applicable to these circumstances, since he was detained from reporting to work for mitigative reasons. He further charged that it was certainly an incongruous action for Carrier to call another carman to perform his duties at approximately 12:06 A.M., when, in fact, he was on the property at about 11:45 P.M.

In rebuttal, Carrier maintained that Claimant arrived at Keenan Yard, forty-five (45) minutes late and failed to report his absence or late arrival to the appropriate Carrier official as required in Car Department Notice 87-12. It noted that a replacement was called out at 12:13 or 12:15 A.M. on August 1, 1987, prior to the time the Acting Trainmaster was aware Claimant was on the property. It asserted that, pure and simply, Claimant was late and failed to notify his Car Department supervisor or other appropriate Carrier official of his personal predicament and, as such, it acted within its rights to call a replacement carman. More particularly, it charged that Claimant failed to report for duty at his designated time, which was a clear violation of General Rule 3 and failed to notify his supervisor of his absence from duty.

In considering this case, the Board finds sufficient evidence to conclude that Claimant was guilty of violating General Rule 3. He did not report for duty at the designated time and place. We do not find a violation of Car Department Notice 87-12, since Claimant was not desiring to be absent from work. In a similar vein, we do not find Agreement Rule 18 applicable as an extenuating defense, since Claimant was not detained for good cause, as that term is generally understood. His failure to set the alarm clock in the right mode is a careless action that brings with it disciplinary consequences. From the investigative record, especially the conflicting testimony of Claimant and the Acting Trainmaster, we cannot conclude that the Acting Trainmaster had actually seen Claimant before calling out the replacement carman and accordingly, he was not estopped from taking this pragmatic action. Keenan Yard is an interchange point and also a terminal for crude ore trains which run between the mine and pellet plant of one customer.

On the other hand, given these findings, we are not convinced that a three (3) days suspension is justified, since Claimant lost seven (7) hours pay on August 1, 1987, and was not previously disciplined for similar offenses. Consistent with the accepted tenets of progressive discipline, we will reduce the penalty to a one (1) day suspension. He is to be made whole for the other two (2) days.

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 November 1989.