

The Second Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
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(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current and controlling agreement Equipment Operator B.G. Wilson, S.S. No. 408-86-7180, was unjustly dismissed from service on September 22, 1989 by Superintendent T.E. Greenwood after an investigation was held on September 15, 1989.

2. That accordingly, Equipment Operator B.G. Wilson be restored to his position with Southern Railway System, be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits paid effective September 15, 1989, the payment of 10% interest rate added thereto, and his personal record expunged of any reference to this discipline.

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 were given due notice of hearing thereon.

This case involves the dismissal of an eight-year employee with a history of absence because he left work after receiving permission to do so on August 18, 1989, and did not return to service until September 12, 1989. There are two questions involved in this dispute. Was the Carrier correct in believing the testimony of its Foreman as to the reason for Claimant's absence on August 18, and was the termination justified under the circumstances.

On August 18, Claimant asked to be let off work shortly before 11:00 A.M. His Supervisor said that he was told by Claimant "That he had to leave ... that he had something to take care of." The Foreman admitted that it could have been a doctor's appointment, but that "to me, it was personal business." Claimant stated, "I told Mr. Sims that I wasn't feeling well, I had to leave."

Clearly there was miscommunication between Claimant and his Foreman. If Claimant had asked for time off for personal business, he was under an obligation to inform the Carrier when he could return to duty on a daily basis. However, if he was sick, it was the practice in Chattanooga for an employee not to call in on a daily basis, but to report back to work with his doctor's certificate.

Apparently when the Carrier did not hear from Claimant, it attempted to contact him at his last known telephone number, which was incorrect. On August 28, 1989, it sent him a letter charging him with excessive absenteeism. On August 30, 1989, Claimant called the appropriate Carrier official and told him he had been under a doctor's care since August 20, 1989, and would not be able to return to work until September 8, 1989. When Claimant finally returned to work on September 12, 1989, he was notified that a Hearing would be held on September 15, 1989, regarding his alleged excessive absenteeism.

The Carrier has not disputed Claimant's medical absence, but contends that since he did not clearly communicate that he was taking time off for medical rather than personal reasons, he did not properly notify the Carrier of his absence and so violated Rule 30. That Rule, reads in pertinent part:

"(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."

If Claimant had clearly notified his Foreman that his need to leave work was medically related, he should not be charged under Rule 30. If Claimant did not notify the Carrier that he would be absent because of illness, his continued absence without additional notification would be a Rule violation. However, under the extremely loose standards applied in Chattanooga for reporting sickness, it would be extremely easy for an individual employee to misunderstand the Rule.

The Carrier has cited a Third Division Award 21278 which states:

"This Board functions as a reviewing authority and it cannot substitute its version of the facts for that reached by the trier of facts who heard the

testimony, observed the demeanor of the witnesses and, by its proximity, was entitled to weigh and evaluate the credibility of witnesses. So long as the conclusions reached are based upon substantial evidence in the record they should not be overturned."

That statement is clearly correct; however, applying its wisdom to the particular facts present here are less clear. This is not a credibility question, but one of recollection and of the meaning of the words used. The Foreman admitted, that in his mind, leaving for medical reasons was the same as leaving for personal reasons. On the other hand, after having been counseled regarding his absenteeism, for Claimant to fail to report his true medical condition to the Carrier was foolhardy, to say the least.


It will never be possible to find the truth regarding this incident. However, the circumstances of this case are such as to make the conclusion inescapable that termination was not the appropriate remedy. Perhaps the period between the incident and the Hearing before this Division, almost two years, has given Claimant a better understanding of his responsibilities and the value of his continued employment with the Carrier. Claimant will be restored to the service of the Carrier with his seniority, and all other rights unimpaired, but without compensation for time lost.

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 8th day of January 1992.