NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1 SECOND DIVISION Award No. 12502
Docket No. 12448
93-2-91-2-272

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Association of
(Machinists and Aerospace Workers
(
(Illinois Central Railroad

STATEMENT OF CLAIM:

"1. That the Illinois Central Railroad violated the current and controlling Agreement between the International Association of Machinists and the Illinois Central Railroad dated September 30, 1985, as subsequently revised and amended, when it harshly and unjustly dismissed Machinist Andrew Lumpkin effective August 6, 1991, because he allegedly refused to obey instructions, deserted his assigned duties and used a company phone without permission.

2. That the Illinois Central Railroad reinstate Machinist Lumpkin to service, make him whole for any and all losses incurred as a result of the investigation conducted on July 26, 1991, and clear his service record of all reference to the incident.

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 employe 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.

On July 19, 1991, the Carrier served notice on Claimant to attend a formal Investigation for the purpose of determining whether on July 15, 1991, he had refused to obey the instructions given to him by the Mechanical Foreman, deserted his assigned duties, and/or used a company telephone without permission. After the Hearing of July 26, 1991, the Carrier dismissed the Claimant on August 6, 1991.

On July 15, 1991, the Claimant was working at the Carrier's Woodcrest, Illinois, shop on the 3:00 to 4:00 P.M. shift when he was notified by the Mechanical Foreman that he had received a personal phone call. At 4:30 P.M. the Mechanical Superintendent discovered the Claimant using a Company telephone in the dispatch shanty, located 100 yards or more from the Claimant's work station, where he had been working on changing a power assembly on an engine. The Mechanical Foreman's and the Claimant's accounts of the events surrounding the use of the Company telephone vary. The Mechanical Foreman received the incoming telephone call for the Claimant and recalled that the caller was a woman who identified herself as the Claimant's girlfriend and that he told the Claimant to wait until his break time at 5:00 P.M. to return the call. The Claimant testified that it was not his girlfriend but his sister, that he had been expecting a telephone call because his mother had been ill and had been taken to the hospital that morning, and that he did not recall the Mechanical Foreman telling him to wait until break time to answer the call.

The Claimant characterized the nature of his call as an emergency and said that he used the telephone in the shanty because the one in the office was being used by someone else. While the General Foreman stated during the Hearing that employees were allowed to use Company phones in the event of an emergency, Claimant did not tell the Mechanical Superintendent that his call was due to a family illness when he discovered him using the phone in the shanty. Nor did he mention the emergency nature of his telephone call to his immediate Foreman when he approached him later that day, after the Mechanical Superintendent apprised the Mechanical Foreman about Claimant using the telephone in the shanty without permission and being away from his assigned job. Both the Claimant and the Mechanical Foreman testified that the Claimant did complete his assigned task of changing the engine's power assembly that day.

The Hearing Officer read the text of four of the Carrier's Rules into the record of the Hearing, which the Organization objected to at the Hearing, on the basis that the Hearing Officer was not being impartial by reading only selected Rules, objections which the Hearing Officer noted. The four Rules read by the Hearing Officer, which are not duplicated here for the sake of brevity, were Rules 4 (Personal Business Restrictions); Rule 5 (Acts of Dishonesty); Rule 9 (Absences) and Rule 11 (Protection and Care of Railroad Property). The Claimant acknowledged that he understood the four Rules that were read, but that he did not understand what Rule 11 had to do with his case. The Carrier also introduced the Claimant's previous personal record, with the

preliminary remark that it was being introduced only for consideration of the measure of discipline, if any, which might be assessed in the case.

The Organization contends that the Claimant is not guilty in that he did not desert his assigned duties because he completed his assigned task on July 15, 1991; in that he did not disobey his Supervisor because the Claimant did not hear the Mechanical Foreman say anything about returning the call at break-time; and in that he used a Company telephone because of his mother's illness. The Organization also avers that, even if the Claimant were guilty as charged, the quantum of discipline assessed by the Carrier is excessive and reflects abuse of managerial authority.

The Carrier asserts that the Claimant is guilty of the three offenses as charged, pointing out that the Claimant had two opportunities on July 15, 1991, to apprise supervision of the emergency nature of his telephone call: when the Mechanical Superintendent found him in the shanty and when the Mechanical Foreman talked to him later that same afternoon about using a Company telephone for emergency calls, but that he did not tell either Supervisor about the alleged family emergency. The Carrier asserts that the Claimant's refusal to obey instructions is reason enough in itself to warrant discipline but that, aside from that, his past discipline record shows him to be an employee with a habit of disregard for Company Rules and failure to benefit from progressive discipline, including five, ten, and 35-day suspensions. The Carrier concludes that the Claimant's violation of its Rules in this instant appeal, plus consideration of his previous personal record, warrant dismissal.

The Board has reviewed the entire record, including the transcript of the Hearing, and the Awards cited by the Carrier in support of its position. The Board notes that neither the Claimant nor the Organization supplied any documentation of Claimant's mother's illness, either at the Hearing itself, or during any of the succeeding appeals on the property. Serious family illness is a factor that would provide an explanation of the Claimant's behavior on the date in question and a factor that this Board would have to consider in evaluating the appropriateness of the Carrier's discipline and any possible mitigation of that discipline. Absent such documentation, this Board finds that the Carrier sustained its burden of proof regarding the charges against the Claimant. The Board further finds that these violations, when coupled with the Claimant's previous disciplinary record, warranted dismissal.

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 27th day of January 1993.