

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13807
Docket No. 13694
04-2-03-3-38**

The Second Division consisted of the regular members and in addition Referee Carmelo R. Gianino when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

- “1. That the Kansas City Southern Railway Company violated the controlling Agreement, particularly, but not limited to, Rules 15 and 29, when Shreveport, Louisiana Electrician C. K. McCormick was unjustly and arbitrarily dismissed from the service of the Kansas City Southern Railway Company following investigation held on June 21, 2002.**
- 2. That, accordingly, the Kansas City Southern Railway Company make whole Electrician McCormick as follows:**
 - a. Reinstate him to service with seniority rights unimpaired;**
 - b. Compensate him for all wages lost at the prevailing rate of pay of electricians and all applicable overtime;**
 - c. Make him whole for all vacation rights;**
 - d. Make him whole for all health and welfare, and insurance benefits;**
 - e. Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;**
 - f. Make him whole for any and all benefits that he would have earned during the time withheld from service; and**

- g. Any record of this arbitrary and unjust disciplinary action be expunged from his personal 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 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 were given due notice of hearing thereon.

By letter dated June 5, 2002, the Claimant was served notice to appear for a formal Investigation into allegations that, on June 2, 2002, he failed to report for work on his regularly scheduled midnight tour contrary to a directive given him by supervision; and that he failed to protect his assignment on that night. The parties mutually agreed to postpone the Investigation, which eventually was held on June 21, 2002. On July 12, 2002, the Claimant was advised that he had been found guilty of violating Rules 1.4, 1.6, and 1.13 of the KCS General Responsibilities, and Rule 1.15 of the KCS Mechanical Department General Responsibilities - both dated May 12, 2000. Appeals were properly filed and heard on the property. The case is now before the Board for adjudication.

The Claimant told supervision that he had a court appearance at 8:30 - 9:00 A.M. on June 3, 2002, shortly after his midnight tour of duty ended. Days before, he requested of supervision permission to leave work early. He was granted his request and was told he would be permitted to leave two hours early. At approximately 10:00 P.M., the Claimant began attempting to contact supervision to now approve a revised request that he be off the entire tour. He finally reached the Diesel Foreman who advised him to call the Superintendent (of Locomotives). He did call the

Superintendent who denied his request and instructed him to report for work as assigned. The Claimant did not comply with this directive, advising the Superintendent that he would be taking off all night.

Rule 1.4 states:

“Employees must cooperate and assist in carrying out the rules and instructions. They must promptly report any violations to the proper supervisor. They must also report any condition or practice that may threaten the safety of trains, passengers, or employees, and any misconduct or negligence that may affect the interest of the railroad.”

Rule 1.6 states:

“Employees must not be careless of the safety of themselves or others, negligent, insubordinate, dishonest, immoral, quarrelsome, or discourteous. Desertion from duty, making false reports or statements, concealing facts concerning matters under investigation, and serious violations of the law are prohibited. Any act of hostility, misconduct, or willful disregard or negligence affecting the interests of the company or its employees is sufficient cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be condoned.”

Rule 1.13 states:

“Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.”

Rule 1.15 states:

“Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must

spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority."

There is no dispute that the Claimant refused a direct order to report for work. In support of the Organization's arguments, it offers that the Claimant's overriding need to be alert for a very important court proceeding outweighed his responsibility to obey orders and protect his job. The Organization also contends that the Carrier violated Rule 29, and that, in compliance with Rule 15, the Claimant fulfilled any responsibility he had by compliance with Rule 15.

Rule 29 states:

"No employee shall be disciplined without a fair hearing by the Carrier. Suspension in proper cases (the proper case is one where leaving the man in service pending an investigation would endanger the employee or his fellow employees), pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

Rule 15 states:

"In case an employee is unavoidably kept from work, he shall not be disciplined. An employee detained from work on account of sickness or any other good cause, shall notify his foreman as early as possible."

Regarding the Organization's assertion that the Claimant did not receive a fair and impartial Hearing because there were no specific Rule(s) cited, the Board is not persuaded. The language contained in the Charging Letter more than

adequately describes the matters under investigation. There can be no confusion to the Claimant or his representative(s) about the alleged violation. Likewise, the Claimant was not disadvantaged in his ability to provide a defense.

Reliance on Rule 15 is also not persuasive. The Claimant cannot hide behind this Rule to circumvent the basic tenet of obeying orders. This Rule was formulated to allow management sufficient time to cover a vacancy caused by sickness or other good reason not to allow employees to absent themselves simply because they provided notification.

The Organization also claims that there was no mention of the Claimant's prior record until the final denial on the property and is not appropriate for the Board to consider. Prior record is an assessment of worth and level of discipline to be applied, especially where progressive discipline is involved. As such, the Board does not view this introduction of the Claimant's prior record as problematic.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 16th day of September 2004.