

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (United Steelworkers of America  
(Lake Terminal Railroad Company

STATEMENT OF CLAIM:

"The discharge of Mr. Craig S. Mcklveen- (unnumbered claim)

This grievance is being filed by the Organization on behalf of Mr. Craig S. Mcklveen, badge #210, who was discharged from the Maintenance of Way department at the close of the business day on May 22, 1990.

The Organization's grievance is that it feels very strongly that Mr. Mcklveen was improperly discharged from the services of The Lake Terminal Railroad Company. We (the Organization) feel that along with omissions in the transcript of the investigation the Company failed to take into consideration any of the facts presented at the investigation in determining a justifiable amount of disciplinary action.

The omissions, which might have been typo or due to the speed of my verbal presentation, can be clearly seen when comparing my closing comments on page 11 of the original copy of the transcript (exhibit-A) to what I verbally presented at the investigation (exhibit-B). The omissions, in my opinion, lessen the gravity of the cruxes of the Organization's position of the charge letter.

There are two very strong points which the Organization is trying to convey. The first point is that even though Mr. Mcklveen did not report off before the start of his designated work shift, he did in fact report off. This in essence is what is demanded of the employees in Rule C, paragraph 1 of The Lake Terminal Railroad Company Book of Operating and Safety Rules and Instructions Governing Employees. Again we stress the point that he did report off.

The second point that we are trying to convey is that if Mr. Mcklveen were to be charged with a rule violation it would have been with violating a contractual rule. That rule would be Rule 44 which is located on page 71 of the Agreement between the Lake Terminal Railroad Company and The United Steelworkers of America. That rule reads as follows:

'Reporting Off: " It is understood and agreed that employees desiring permission to be off shall request same prior to the start of their tour of duty, except in cases of emergency.'

This rule (contractual) which was entered into the Agreement in the negotiations of the 1980 Agreement was in effect placed there to give some re-enforcement to Rule C, paragraph 1 of the Book of Operating Rules. Even at

that time, the words 'except in cases of emergency' was added to that rule because there was never a doubt in anyone's mind that there are circumstances or 'emergencies' if you will, that are beyond anyone's control.

In this instant claim, that is what developed on the day of Wednesday, May 8, 1990. Mr. Mcklveen's car developed engine trouble which was a circumstance which was beyond his control. Even if Mr. Kepic in his statement on page eight(8) of the transcript states " I would think that would have been his first move unless there was some other circumstance such as an emergency with the car where safety would be an issue." You might present the argument that it is his responsibility to provide himself with a reliable means of transportation. To this I would ask you to review his employment status which would show you that Mr. Mcklveen has been on furlough from The LAke Terminal Railroad Company for approximately over 60% of the time since July of 1987. When a person is out of work for such an extended period of time it is a wonder that he has managed to find a suitable means of transportation and make it to work on time.

I would like to add that I have worked with Mr. Mcklveen quite often, having started my service with the Company two weeks prior to Mr. Mcklveen, and believe that the Company would be losing a well experienced railroad worker should it decide to make firm it's decision to discharge him.

I would like very much for you to consider the facts which I have presented and would hope that you would reverse your decision to have Mr. Mcklveen discharged from the services of The Lake Terminal Railroad Company." (sic)

#### FINDINGS:

The Third 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 employees 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 May 8, 1990, Claimant was scheduled to start work at 7:00 A.M. At 7:27 A.M. he reported that his car had broken down. Because this was the fifth time in eight months that Claimant was unable to arrive at work on time because of car problems he was cited to attend an Investigation, after which he was notified that he was dismissed from Carrier's service. Claimant's Organization has challenged the discipline on a variety of procedural and substantive grounds stressing that the Investigation transcript was incomplete and that the discipline assessed was excessive.

After consideration of the entire record it is the view of this Board that the discipline assessed Claimant was indeed excessive and not appropriate in the circumstances of the violation. Accordingly, we will order that discipline be modified to a long term suspension. Claimant is to be given a final opportunity to return to Carrier service as a productive employee. He will be returned with full seniority and fringe benefits but without compensation for time out of service. Claimant is cautioned that this Board views this as a last chance to become an acceptable employee and that he is expected to comply with Carrier's rules and be at work at his scheduled times.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1991.