

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30995  
Docket No. MW-31683  
95-3-93-3-718

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(CSX Transportation, Inc. (former  
( Seaboard Coast Line Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The five (5) days of suspension imposed upon Trackman J. L. Hill for alleged failure to notify Roadmaster White or Assistant Roadmaster Smith before leaving the camp cars account a personal injury he sustained on October 30, 1990 was capricious, unwarranted and on the basis of unproven charges [System File 91-86(AWP)/12(91-527) AWP].
- (2) The Claimant shall have his record cleared of the charges leveled against him and he shall be made whole for all wage and fringe benefit loss suffered as a result of the Carrier's actions."

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 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 waived right of appearance at hearing thereon.

Claimant and a fellow employee sustained minor injuries on the same date. Both received medical attention and when left at the Camp Cars where both were staying, each was advised that if their condition worsened or if either wished to leave the Camp Cars for

any reason, they were to call.

The contact phone numbers, three in total, were not given to Claimant, but to the other injured employee.

Claimant did leave the camp at about 11:00 PM that evening, without calling any one of the three numbers.

Claimant was charged with insubordination and after a timely held Investigation, was assessed a five day suspension from service.

Claimant's defense is that the telephone numbers of the three he was to contact were not available to him when, at 11:00 PM that evening, he left the Camp Cars to go to his sister's house.

The Carrier did not rebut Claimant's contention of unavailable numbers. The Assistant Roadmaster gave the numbers to the other injured employee, but not to Claimant. The Foreman had the numbers, but he was staying at a motel that was unknown to Claimant. The numbers were posted on the bulletin board in the cook's car in the camp, but the cook's car was locked up for the evening and the other injured Trackman, who had the numbers, had already left the camp.

At this juncture it is evident that the contact numbers were not available to claimant at the time he decided to leave the Camp Cars to go to his sister's house so he could receive additional medical attention.

There is nothing arbitrary about the Assistant Roadmaster's insistence that Claimant call him or one of the other two Supervisors should the discomfort of the injury increase, or if he wanted to leave the camp, for any reason. To the contrary, such instructions were only in the best interest of the Claimant. In the event he needed further medical attention, Carrier stood ready to furnish same.

However, in order to comply with instructions it is necessary to establish that the instructions could be followed. This was not done. Claimant's testimony about the unavailability of the contact numbers at the time he felt it necessary to leave stand unrefuted on the property.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.

LABOR MEMBER'S  
CONCURRING AND DISSENTING OPINION  
TO  
AWARD 30995, DOCKET MW-31683  
(Referee Hicks)

In this case, the only charge against the Claimant was that of leaving the camp car without notifying one of three designated Carrier officers. The Carrier found him guilty and imposed a five (5) day suspension. In order to hold an employe accountable for failure to comply with instructions, the Carrier must establish that the instructions could be followed. Inasmuch as the Carrier failed to show that the Claimant could have followed the instructions, the award correctly sustains the claim on that basis.

Implicit in the Carrier's asserted right to enforce its instruction to notify a Carrier officer before leaving the camp car is the notion that the Carrier is the master of the workers' lives both on and off-duty, and that the Carrier is in a position to determine what is "in the best interest of the Claimant". However, since the 13th Amendment to the United States Constitution specifically abolished such "employment" relationships, gone are the days when workers were required to seek permission from the master to leave the plantation. Plainly stated, an employe's duty to comply with Carrier's instructions does not extend to off-duty hours except under certain narrowly defined conditions which were not present here, contrary to the dicta included in the findings here.

Respectfully submitted,



G. L. Hart  
Labor Member