

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Houston Belt and Terminal (HB&T) Railroad:

Claim on behalf of L. Kuykendall, for reinstatement to service with all lost wages and benefits restored, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Article VII, when it assessed him with excessive discipline." GC File No. 91-51-H-D. BRS File No. 8527.HB&T.

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 were given due notice of hearing thereon.

On February 4, 1991, Claimant received a letter from the Carrier directing him to attend a "Sav-A-Back" class scheduled for 3:00 P.M. on February 26, 1991. On February 7, 1991, Claimant informed the Signal Superintendent he had a doctor's appointment on the day of the class. The Superintendent told Claimant it would be necessary for him to reschedule the appointment because this was the last class offered on the Carrier. On the day of the scheduled class, Claimant's Foreman reminded him that he was required to attend. When Claimant said he would not attend because he had something else to do, the Foreman instructed him to telephone the Superintendent. Claimant did so, and told the Superintendent he was refusing to attend the class. According to the Superintendent, Claimant became argumentative, loud and abusive during this conversation.

Claimant was subsequently directed to attend a Hearing, at which he was charged with failing to comply with instructions to attend the class and insubordination. Following this Hearing, Claimant was dismissed from service.

The Organization has appealed this claim strictly upon the issue of the severity of the discipline. Accordingly, there is no issue of the validity of the charge against Claimant for us to consider. In weighing the measure of discipline, this Board applies a number of criteria, such as the nature and severity of the offense, the Claimant's prior record and any mitigating circumstances.

According to Claimant, he was having financial and legal problems as a result of his being off work due to an injury. Although the Carrier had continued paying him for part of the time he was off, these payments had stopped. Claimant states he was in jeopardy of losing his home and had to make arrangements to prevent this. In Claimant's mind, this took precedence over attending the class.

We can see how the stress Claimant was under could lead him to act in the manner he did. There is no evidence this was typical behavior for him. Claimant, at the time of this incident, had twelve years of service with the Carrier. We have not been referred to any prior discipline. Under the circumstances, we find that the discipline imposed was excessive and direct that Claimant be reinstated to service with seniority unimpaired, but without compensation for time lost.

In returning Claimant to work, we wish to make it clear to him that while his circumstances may have explained his conduct, they did not excuse it. We have not disturbed the Carrier's finding that Claimant failed to follow instructions and was insubordinate. Any future occurrences of a similar nature, explainable or not, may result in his dismissal.

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 21st day of October 1992.