

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30136  
Docket No. MS-30322  
94-3-92-3-65

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

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

STATEMENT OF CLAIM: "The discipline (1-day off) assessed on Mr. Domingo Soto.

This grievance is being filed by the Organization on behalf of Mr. Domingo Soto, #1332, employee of the Track Department.

The grievance is that the Company unjustly disciplined Mr. Soto for the alleged violation of Rule C., paragraph 1 of the Lake Terminal Railroad Book of Operating and Safety Rules, which reads as follows:

'Employee must observe their assigned hours of service and will not absent themselves from duty without permission from property authority.'

FINDINGS:

The Third 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.

At the time this grievance arose, Claimant was employed as a laborer in Carrier's Maintenance of Way Department. It is uncontroverted on the record that on August 2, 1991, Claimant failed to appear for work at 7:00 a.m. as scheduled. He called Carrier at approximately 7:49 a.m. and left a voice mail message that he had overslept and would not be coming to work.

By letter of August 5, 1991, Claimant was charged with violation of Operating Rule C.1. and was assessed the penalty of one day's suspension without pay. At Claimant's request an investigation was held on August 22, 1991, following which the discipline was sustained. The Union appealed the penalty and processed the claim up to and including the highest Carrier official designated to handle such matters.

"Operating Rule C.1. reads as follows:

Employees must observe their assigned hours of service and will not absent themselves from duty without permission from proper authority."

By Claimant's own admission at the investigation, he failed to appear for work at the beginning of his shift, and called in more than 45 minutes after the start of that shift. Moreover, it is unrefuted on the record that this was his third offense of this nature within a one-year period of time. For the first violation he received a letter of reprimand and for the second a one-day suspension.

It is clear from the transcript on this record that Claimant understood the Rule concerning reporting to work on time. It is also clear that despite Carrier's progressive discipline for the two prior offenses, Claimant was guilty of the identical offense less than eight months later. Under the circumstances, Carrier's assessment of one day's actual suspension is neither arbitrary nor excessive. Accordingly, the instant claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.