

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISIONAward No. 24418  
Docket No. 44090  
95-1-93-1-S-6599

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers  
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(Soo Line Railroad

STATEMENT OF CLAIM:

"Engineer Richard Horace, Chicago Terminal Seniority District requests that he be reimbursed for all time lost when he was assessed a 30 day actual suspension and required to serve an additional 45 day previously deferred suspension under discipline notice dated November 5, 1990 on the following charge:

Violation of general Rule B, Rule 600 and Rule 604 of the General Code of Operating Rules for your alleged failure to properly protect Assignment #1331, September 29, 1990, as instructed by Crew Dispatcher, A. Piwaron. Suspension was effective 12:01 a.m., November 5, 1990 through 11:59 p.m., January 18, 1991."

FINDINGS:

The First 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 to appearance at hearing thereon.

Claimant was a regularly assigned yard service engineer at Bensenville, Illinois, when this issue arose. Bensenville is a freight yard located within the Chicago Terminal. Chicago Terminal engineers work Monday through Friday with assigned rest days of Saturday and Sunday, although engineers "may" work six out of seven days if they so choose. However, due to a shortage of engineers at that location, engineers were often "required" to work on their rest days at the time of this dispute. In that connection the June 28, 1985 Agreement between the Parties stipulates, in pertinent part:

"A regularly assigned engineer who elects not to work on either one or both of the rest days on their assignment must notify the caller at least eight (8) hours prior to the start of their assignment on such rest day or days. An engineer may notify the caller of his desire to be off for both rest days at the same time."

On September 28, 1990, at 1430 hours, Claimant contacted Crew Management stating that he intended to "take a rest day, tomorrow, Saturday." The crew dispatcher informed Claimant that he had to "deny" his request because of a "shortage of men." The Claimant asserted that he was "not going to accept the denial" because he "had something to do and it is my rest day." Although the crew dispatcher again informed Claimant that there were "insufficient engineers to protect the service in the Chicago Terminal" and that his services were "required," Claimant did not report for the assignment.

On October 3, 1990, Carrier sent Claimant a notice with regard to an Investigation/Hearing for his "alleged failure to properly protect assignment #1331." As a result of the testimony developed at the hearing, Claimant was assessed a 30-day actual suspension for violation of the aforementioned rules. That disciplinary action triggered imposition of a 45-day deferred suspension previously assessed to Claimant's record.

The Organization protested the discipline maintaining that:

- 1) Crew Management Center denial of rest days constituted a violation of the June 28, 1985 Agreement;
- 2) Discipline was excessive;
- 3) Claimant did not receive a fair, impartial hearing.

Carrier denied the claim maintaining that:

- 1) As the number of engineers available lessened, it became necessary for more engineers to work their rest days for which engineers received appropriate compensation;
- 2) Claimant was "clearly insubordinate" and the discipline was not excessive given the "severity" of the offense.
- 3) The Organization presented no evidence that the hearing was unfair.

On December 6, 1990, Carrier offered Claimant a "leniency reinstatement" which would have returned him to work at the end of the 30 days without payment for the time lost and with "the 45 days deferred or whatever portion of the 45 days left at the time the compromise offer is accepted continue to be held deferred with the one year probationary period to continue from September 4, 1990, when the 45 day deferred discipline was assessed." Claimant declined Carrier's offer.

Subsequent correspondence between the Parties failed to settle the matter. The dispute is now before this Board for resolution. We have again carefully reviewed the transcript of the hearing, in addition to a copy of the communication between Claimant and the Crew Caller on September 28, 1990. There can be no question that Claimant was clearly informed that it would be necessary for him to work on Saturday, September 29, 1990. Claimant was told that "due to a shortage of men" his services were "needed." Claimant was also told that his absence would be "unauthorized." Claimant was insubordinate in his refusal to report as instructed. It is understandable that Claimant was frustrated by what he perceived to be a violation of his agreement rights. However, the concept of "obey now and grieve later" is certainly not new to anyone in this industry.

With regard to the quantum of discipline assessed, we cannot find thirty days for wilfull insubordination excessive or unreasonable. Claimant must have been aware that any additional discipline would "trigger" the prior deferred suspension. Finally, we find no support for allegations that Claimant was not afforded a fair and impartial hearing. So far as this record shows, Claimant did receive a full and fair Investigation at which Carrier proved that Claimant was knowingly and willfully insubordinate. Accordingly, this claim is denied.

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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 First Division

Dated at Chicago, Illinois, this 6th day of February 1995.

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