

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Seaboard System Railroad

Dispute: Claim of Employee:

1. That the Seaboard System Railroad Company violated the controlling agreement when it improperly disqualified Machinist K. E. Gallagher, Jr. from holding any assignment requiring him to perform service on Thursday and Sunday, effective March 2, 1983.
2. That accordingly, the Seaboard System Railroad be ordered to compensate Machinist Gallagher for all pay and benefits lost (made whole) as a result of the above disqualification.

FINDINGS:

The Second 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 employes 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.

In November, 1982, the Claimant was employed as a Machinist at Carrier's Tampa, Florida facility known as the Uceta Shops. Sometime during the Spring of 1982, Claimant assumed the position of pastor in a local Pentecostal Church. Claimant received no compensation for the services he rendered to the members of the church and church services were conducted in Claimant's home.

Through a series of force reductions and bumping of other employes in accordance with the seniority provisions of the Collective Bargaining Agreement, not clearly documented by the record, Claimant was scheduled to work the

second shift from 3:30 P.M. - 11:30 P.M. with Tuesday and Wednesday as his consecutive rest days at the time this Claim arose. Due to a conflict between his work schedules and church related activities, the evidence shows that Claimant was absent from his shift without permission on three separate Sundays, November 7, 14 and 28, 1982.

A careful review of the record reveals the presence of sufficient credible evidence that Claimant failed to comply with Rule 26 of the applicable Agreement. Claimant telephoned the Carrier, shortly before the start of his shift on the dates in question, and announced he would not report for personal reasons. Claimant never received permission to absent himself from his scheduled shift on these dates. While it was disputed whether the Claimant informed the Carrier on one of the three Sundays that he could not report due to conflict with his pastoral duties, the fact remains that Claimant did not have permission to absent himself from his work assignment for each of the three Sunday shifts.

The Board finds there is no evidence, as the Organization contends, that the Hearing Officer was incapable of conducting a fair and impartial Investigation due to his participation in a prior Investigation of Claimant on similar charges. Nor does the Board find evidence of record to substantiate Claimant's position that he properly exercised his contractual rights to report off from his assigned shift.

Further, based upon the scant record of the Investigation, the Board cannot determine the extent to which Claimant's religious beliefs precluded work on Sunday as his Sabbath, or whether Claimant merely elected to pursue optional religious activities to the detriment of his job commitment with Carrier. Even if the Board assumes that Claimant was precluded by his religious beliefs from working on Sunday, the Board finds the Claim to be without merit for the following reasons.

First, the Board notes that Claimant received a twenty day suspension for the same offense which was upheld in Second Division Award. No. 10613. Second, the Claimant is not the only employe to experience similar rejection of so-called religious accommodation claims. Second Division Awards No. 10121, 10401. Third, the Board finds that Claimant persisted in absenting himself on November 14, 1982, without permission and without requesting accommodation by the Carrier even though he had been subject to an Investigation on similar charges only 4 days earlier.

Fourth, the Carrier has argued before this Board that it was not required to circumvent or violate the Collective Bargaining Agreement to accommodate the religious beliefs of Claimant. The parties are in apparent Agreement that Claimant was placed in his present dilemma through the operation of the seniority system in effect at the time of the force reductions and later, his disqualification from Thursday and Sunday employment. The Organization cites no authority to support its contention that Claimant be assigned a split shift to accommodate his pastoral duties. Indeed, the Supreme Court in Trans World Airlines, Inc. v. Hardison, 432 U.S. 65, 79 (1977), rejected the petitioner's argument that the airline work out a shift or job swap to accommodate his refusal to work on his Sabbath.

"We agree that neither a collective-bargaining contract nor a seniority system may be employed to violate the statute [Title VII], but we do not believe that the duty to accommodate requires TWA to take steps inconsistent with the otherwise valid agreement. Collective bargaining, aimed at effecting workable and enforceable agreements between management and labor, lies at the core of our national labor policy, and seniority provisions are universally included in these contracts. Without a clear and express indication from Congress, we cannot agree with Hardison and the EEOC that an agreed-upon seniority system must give way when necessary to accommodate religious observances". (Emphasis supplied).

Claimant admitted at the Investigation that since mid-September, 1982, he was absent from Carrier's service on an average of one day a week. The Board finds that Claimant rendered only four days of service per week, rather than the five required by contract. In rejecting a similar 4-day schedule, the court in Trans World Airlines, Inc. v. Hardison, supra, noted at 432 U.S. 84, that this form of accommodation would itself constitute unequal treatment based on religion:

"To require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship. Like abandonment of the seniority system, to require TWA to bear additional costs when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees on the basis of their religion. By suggesting that TWA should incur certain costs in order to give Hardison Saturdays off the Court of Appeals would in effect require TWA to finance an additional Saturday off and then to choose the employee who will enjoy it on the basis of his religious beliefs. While incurring extra costs to secure replacement for Hardison might remove the necessity of compelling another employee to work involuntarily in Hardison's place, it would not change the fact that the privilege of having Saturdays off would be allocated according to religious beliefs." (Footnotes omitted).

A W A R D


Claim denied.

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Award No. 10927
Docket No. 10626
2-SSR-MA-'86

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 16th day of July 1986.