

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That Machinist Ronald G. Lamb was unjustly dismissed from service on March 21, 1972.
2. That Machinist Ronald G. Lamb be compensated for all time held out of Carrier's service; his seniority be restored, all accrued vacation rights and pay for vacation lost, health and welfare, sick leave benefits, and any other benefits accruing to him be paid for by the Carrier.

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 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.

Claimant was charged with failure to work a full tour of duty on February 10, 1972 and following a hearing relative thereto he was dismissed from service. The record reveals that claimant reported for work at 8:00 A.M. on February 10, 1972. He clocked out at 12:03 P.M., went home for lunch, and failed to return to work that day. Claimant testified at the hearing that when he arrived home for lunch he got violently ill, thus his reason for not returning to work.

There is no question that if claimant came within the emergency provisions of Rule 22 then his absence from work on the claim date precluded assessment of discipline based on his unauthorized absence from work on the afternoon of February 10, 1972. However, the question to be determined herein is who has the burden of proof relative to claimant's absence? Petitioner contends that Carrier has the burden of proving

that Claimant was absent without justification, while Carrier maintains that when claimant asserted that he was absent due to illness on this date he has the burden of proving same.

Claimant admits that he did not have permission to be absent from work on the afternoon of February 10, 1972. Thus, when he alleges sickness as justification for such absence, it is the opinion of this Board that he must come forward with evidence to substantiate this allegation. Claimant failed to produce such evidence at the hearing and he is thereby precluded from claiming protection under the emergency provisions of Rule 22.

Since it has been established that claimant absented himself from work on the afternoon of February 10, 1972 without permission or excuse, we deem it appropriate for Carrier to examine claimant's past service record when determining the discipline to be assessed. After examining claimant's extremely poor attendance record, Carrier concluded therefrom that dismissal from service was justified. We do not find that determination arbitrary or capricious and we are thus reluctant to substitute our judgment for that of the Carrier. Claimant's dismissal therefore will not be upset by this Board.

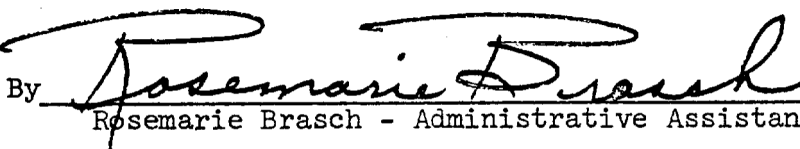
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of April, 1975.