

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: { System Federation No. 97, Railway Employees'
Department, A. F. of L. - C. I. O.
(Firemen & Oilers)
Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. M. E. Norwood when they removed him from service as a result of an investigation held on October 28, 1977.
- (2) That, therefore, Mr. Norwood be returned to service with all rights, privileges and benefits restored.
- (3) That, he be made whole for all health and welfare benefits, pension benefits, unemployment and sickness benefits and any other benefits he would have earned had he not been removed from service.
- (4) Further, that he be compensated for all lost time, including overtime and holiday pay plus 6% annual interest on all lost wages and that such lost time be counted as vacation qualifying time.

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, a tractor operator and laborer, was permanently removed from service on November 17, 1977. He was dismissed following an investigation held October 28, 1977, at which facts were developed concerning his alleged failure to report for duty on time on October 17, 1977 and October 20, 1977 and falsification of time cards on both dates.

Rules 2, 14, 15 and 16 of the controlling agreement provide in pertinent part as follows:

- "2. Employees must be conversant with and obey the Company's rules."
- "14. Employee must ... not withhold information, or fail to give all the facts, regarding irregularities ... or rule violations."
- "15. Employees must report for duty as required ..."
- "16. Employees must not be indifferent to duty, insubordinate, dishonest, immoral or quarrelsome or vicious."

On Monday, October 17, 1977, Claimant was to be punched in and ready for work at 3:30 p.m. He had just been reassigned to work in the freight car shop; was given a new position number; and was to begin working a different shift. Claimant had recently returned from a six-month suspension for intoxication.

The procedure for recording employees' time in the freight car shop is a simple one. Employees on the 3:30 p.m. to 11:50 p.m. shift are to be changed into their work clothes and ready for duty by 3:30. Employees report to the time clock where they are handed a clock card and a detail card. Employees record their starting time by punching in the clock card. At the end of their shift, employees mark in pencil the time they go off duty on the detail card and calculate their time in hours and minutes.

On October 17, 1977, Claimant did not show up at the time clock by 3:30 p.m., at which time his foreman left that area and went down to the one-spot. Claimant appeared at the one-spot at about ten minutes to four, and his foreman asked him two questions: Who gave him his clock card? Was he late for work? Claimant replied that someone in the Rip Track Office had given him a clock card, and that he was not late for work. The foreman then asked Claimant to show him his clock card and the card showed Claimant punched in at 3:43 p.m. At the close of the shift, when the foreman collected the clock and detail cards, Claimant's clock card showed him punched in at 2:50 p.m. The clock card submitted by Claimant on October 17, 1977 was smeared and dated Friday, October 14, 1977. Claimant signed out at 11:50 p.m. and claimed eight hours of work on both his clock and detail cards. Employees are not permitted to keep extra clock cards and Claimant was unable to explain how he came into the possession of a clock card with an early punch in time on it.

On October 20, 1977, Claimant punched in at 3:36 p.m., six minutes late. Yet, on both his clock and detail cards for October 20, 1977, he claimed a full eight hours.

The thrust of the argument raised by the Organization on Claimant's behalf was that a great deal of confusion was created by the fact that Claimant had just changed shifts and position numbers, and that it was a Carrier officer who had given Claimant the mysterious clock card with the 2:50 punch in time. Assuming arguendo that Claimant was confused by his new assignment, his confusion was neither an excuse to submit a false time card nor to report a full day's work when

a full day's work had not been performed. Further, any possible confusion on Claimant's part on Monday, October 17, 1977, does not explain Claimant's misconduct on October 20, 1977. By October 20, 1977, Claimant had worked his new position for three days and was fully aware of his assignment.

The discipline assessed by the Carrier was not unreasonable, unjust or arbitrary. Claimant's conduct on October 17 and 20, 1977 was clearly in violation of the controlling agreement and inexcusable.

The Carrier did not violate the Agreement.

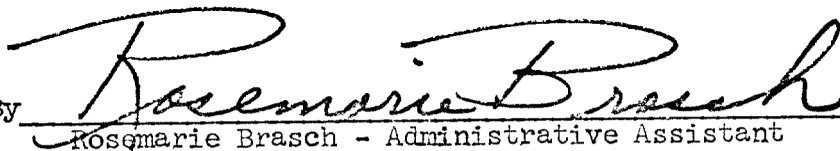
A W A R D

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 19th day of March, 1980.