

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

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Boilermakers)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That Boilermaker, Robert S. Moeller was improperly taken out of service without a hearing or investigation.
2. That Boilermakers, Robert S. Moeller, was improperly dismissed from service following trial held on August 28, 1978.
3. That accordingly the Carrier be ordered to reinstate the aforementioned Boilermaker to service with all seniority rights unimpaired all lost wages, Health and Welfare, Vacation and Holiday pay now in effect and any that may be negotiated as a result thereof until he is restored to service.

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, Robert S. Moeller, under date of August 14, 1978, was advised to appear for trial on August 18, 1978, in connection with the following charge:

"Deserting your assignment at approximately 1:15 A.M., Aug. 13, 1978, as Boilermaker, at Buckeye Diesel Terminal, Columbus, Ohio, in that you were absent from your assigned work location, without proper authority or permission from approximately 1:15 A.M. to the end of your tour of duty at 7:00 A.M."

At the request of claimant the hearing was postponed and held on August 28, 1978. Following an appropriately conducted hearing the action herein complained of was taken by the Carrier on August 31, 1978.

The record indicates that claimant informed his immediate supervisor around 11:45 P.M. that he was sick and intended to mark off at 1:00 A.M. In Mr. Moerller's own testimony he indicated that the illness was caused by burning the battery boxes (floor) out on an engine. He proceeded to finish some immediate work and around 1:00 A.M. he returned to the office and informed the supervisor he was leaving. At some point in the conversation he asked the supervisor to mark his time card. Claimant was advised to see the General Foreman as standing orders required his permission to mark off. Apparently Mr. Moeller felt it would be, as he put it, "a big hassle to discuss the matter with the General Foreman." In any event he did not go to the foreman for permission but left the property around 1:15 A.M.

The Carrier raises some issue with respect to the fact that claimant did not correct his time card. However, the testimony of Carrier witnesses indicates that claimant's immediate supervisor informed the individual in charge of time cards to mark Mr. Moeller out at 1:15 A.M. The General Foreman countermanded that request and the time card was left as out at 7:00 A.M. There is no evidence in the record to indicate the reason for such action. Although technically an individual is responsible for the accuracy of his time card, Carrier testimony indicates that frequently the employee was marked out at 7:00 A.M. as the individual in charge saw him leave the property. Claimant pursued a course of action which was not unusual with no intent to falsify as is evidenced by his request to the supervisor that he be marked off and the subsequent actions of that supervisor in compliance with that request.

It is evident from the record that claimant left the property without permission from the General Foreman. He had been informed by his supervisor that such permission was necessary. He did, however, inform his supervisor and there is no charge that he was not sick as claimed. While such disobedience of clear instructions cannot be condoned it may be understandable under the circumstances.

The Carrier refers to the past record of claimant to justify the severity of discipline. It entered in the record a self-serving statement to the effect that claimant had pled guilty before trial to some previous charges. Claimant takes exception to the use of such information claiming that as a condition of cooperation he was promised that the information would never leave the Diesel Terminal. There is no further documentation of evidence with regard to the matter in this record. Such a statement standing alone and under challenge by the grievant does not constitute credible proof of guilt and must be discounted by this Board.

Claimant was guilty of leaving the property without proper authority after being instructed by his immediate supervisor that permission from the General Foreman was necessary. Such actions cannot be condoned and strong disciplinary measures were merited. However, on the basis of the foregoing and the entire record, this Board is not convinced that the ultimate industrial penalty is appropriate. Mr. Moeller has suffered serious financial loss which it is hoped will be remedial in nature. He will be returned to the service of the Carrier with the admonition that future actions of this kind may result in more severe penalty.

Form 1
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Award No. 8387
Docket No. 8172
2-CR-BM-'80

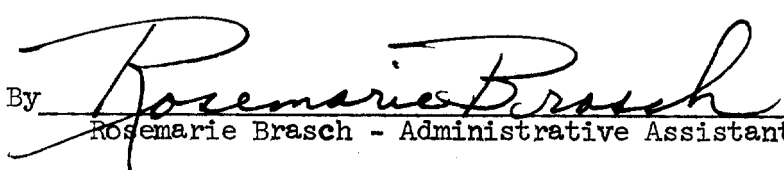
A W A R D

Claimant will be returned to the service of the Carrier with seniority unimpaired but without pay for the time lost.

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 25th day of June, 1980.