

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Baltimore and Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Chicago Terminal Railroad Company violated the terms and conditions of the current Agreement, specifically Article V of the August 21, 1954 National Agreement when Mr. H. D. Swann, Manager Labor Relations, failed to timely respond to the General Chairman's claim letter dated March 6, 1979 until May 9, 1979, which is sixty-four (64) days after the claim was filed.
2. That as a result of an investigation held on Thursday, October 26, 1978 Carman Herbert Robinson was dismissed from the service of the Baltimore and Ohio Chicago Terminal Railroad Company effective November 22, 1978. Said dismissal of Carman Herbert Robinson is arbitrary, capricious, unreasonable, unfair, unjust and in violation of Rule 26 of the current working Agreement.
3. That the Baltimore and Ohio Chicago Terminal Railroad Company be ordered to reinstate Carman Herbert Robinson to its service with seniority, vacation and all other rights and benefits unimpaired and to compensate him for all time lost until said reinstatement is in effect.
4. That the Baltimore and Ohio Chicago Terminal Railroad Company reimburse Carman Herbert Robinson for all losses sustained on account of loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service. In addition to the money amounts claimed herein Carman Robinson shall receive an additional six (6) per cent per annum compounded annually on the anniversary date of claim.

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.

This case arises from the claim of former Carman Tentative Herbert D. Robinson, an employee of approximately 16 months' service, that he was unjustly dismissed from the service of the Carrier as a result of being found guilty as charged of leaving his assignment without permission and falsification of his daily service card.

Carrier operates a Railway Terminal at Chicago, Illinois, which includes Forest Hill, where Claimant and other carmen are employed in the work of the Craft at facilities maintained for inspection and repair of railway cars and truck semi-trailers being transported on flat cars.

Claimant Robinson held regular second shift assignment at Forest Hill, with rest days of Thursday and Friday.

On October 14, 1978, at approximately 10:15 P.M., it was reported to Claimant Robinson's immediate supervisor, E. Hollis, Assistant Car Foreman, that Robinson had been observed departing the property through the south gate dressed in his street clothes. Mr. Hollis immediately went in search of Robinson and after checking the parking lot was unable to locate Robinson's automobile. Mr. Hollis then entered the Terminal Building and searched the locker room and rest room and did not find Mr. Robinson. At approximately 10:35 P.M., Mr. Hollis commenced yet another search of the area again looking in the parking lot, the locker room and the rest room and did not locate Robinson. At approximately 10:45 P.M. Mr. Hollis then went to the south gate, the gate which Robinson necessarily would have used in order to depart the property and asked employees at that location if they had seen Robinson return. They said they had not seen Robinson. At approximately 11:00 P.M., Mr. Hollis again searched the entire facility. At 11:25 P.M. Mr. Hollis' relief supervisor, Assistant Car Foreman Stanley Pala arrived and both Mr. Pala and Mr. Hollis conducted a complete search of the parking lot, rest room and locker facilities searching for Robinson. At the conclusion of the shift, Mr. Hollis asked employees in the locker room if they had seen Robinson and they said that they had not. Robinson had not requested permission to be away from his assigned work area and performed no service between approximately 10:15 P.M. and 12:00 Midnight, the scheduled relief time for second shift, although he had filled out and signed a daily service card for the date of October 14, 1979 indicating 8 hours of work.

By letter dated October 18, 1978, Robinson was instructed to attend investigation in the office of the General Car Foreman at Forest Hill, Chicago, Illinois, on October 26, 1978 at 9:00 A.M. and was further advised that he was charged with leaving his assignment without permission on October 14, 1978 and falsification of his daily service card on that date.

An undated claim filed on behalf of Robinson was received by the initial officer designated to receive claims and grievances on December 12, 1978 contending that the notice of investigation was not legal due to the fact that it was not signed by General Foreman Newshaw but contained only a typewritten name. It was further contended that the hearing was not fair and impartial because the hearing officer did not sustain the objections of the Local Chairman.

The notice of investigation furnished Robinson was in full compliance with Agreement provisions. The fact that the letter of October 18, 1978 notifying Robinson of the charges herein did not contain a signature in no way constitutes improper notification of the investigation.

Rule 26 states in pertinent part as follows:

"(c) No employee shall be disciplined without a fair hearing by the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and the duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The record of the investigation in the instant case shows that the hearing was conducted in a fair and impartial manner with sufficient opportunity for examination of submitted evidence, cross-examination of witnesses, presentation of witnesses and introduction of testimony and evidence on Claimant's behalf and all rules of the Agreement were adhered to in the handling of the case. Thus, Robinson was afforded a fair and impartial investigation. That the investigation was conducted in a fair and impartial manner is clearly seen when compared to the standards set by First Division Award 5197. Award 5197 states:

"The rule providing that an employee will not be suspended or dismissed without a fair and impartial trial contemplates that the accused will be apprised of the charges preferred against him, that he will have notice of the hearing with a reasonable time to prepare his defense, that he shall have an opportunity to be present in person and by representative that he shall have the right to produce evidence in his own behalf and the further right to cross-examine witnesses testifying against him."

The Claimant was afforded a fair and impartial investigation and that the Local Chairman's contention that the investigation was not fair and impartial on the basis that the investigating officer failed to "sustain" the Local Chairman's objections is seen to be without basis in fact.

Robinson was charged with leaving his assignment without permission on October 14 and falsification of his daily service card. The evidence adduced at the investigation held October 26, 1978, proved Robinson's guilt of each of the charges.

Robinson's immediate supervisor, Assistant Car Foreman E. Hollis, testified that at approximately 10:15 it had been reported to him that Robinson had dressed in his street clothes and had gone out the south gate in his car. Mr. Hollis

stated that he had made several searches of the complete facility between the time he was so informed of Robinson's absence and the conclusion of the second shift at 12:00 Midnight and that at no time had he either seen Robinson or been able to learn of his whereabouts from any other employees on the property. Hollis further testified that Robinson's automobile was not present in the parking area at the time he had gone in search of Mr. Robinson. Mr. Hollis was assisted in his search for Robinson during this time period by Relief Foreman Pala, who stated that he had searched the locker room, the rest room areas and the entire facility and had been unable to locate Mr. Robinson.

Further, Robinson himself openly admitted that he had performed no service between the hours of 9:30 P.M. and 12:00 Midnight, was not present in the area in which he had been assigned to work and that he had done so without permission and had signed the time card indicating 8 hours of work. However, Robinson denied that he had departed the property; and alleged that during this time period from 9:30 to 12:00 Midnight he had been "sick" and had been located in the rest room in the Terminal Building during the majority of the time with brief trips to the telephone to call his "girl friend".

Claimant's scenario of his whereabouts on the evening of October 14, 1978 between 10:15 and 12:00 Midnight is transparent and self-serving. Claimant submitted no evidentiary data which would prove that he was, in fact, "sick" on the evening of October 14 and further, the evidence of record bears no indication that Robinson had previously raised complaint or otherwise informed his supervisor that he was not feeling well on the night involved herein. Robinson contended that he was present during the entire time either in the parking lot or in the rest room in the main terminal facility yet two responsible supervisors of the Carrier, Mr. Hollis and Mr. Pala, as well as additional employees on duty at Forest Hill were unable to locate Robinson at any time during this time period.

That Claimant's past record was considered in determining the extent of discipline to be rendered is in accordance with the principle established by the Board that such action is proper. See for example Second Division Awards 5182, 5987, 5333 and 6373.

Additionally, the Board has held that falsification of a time card, standing alone, is an offense justifying discipline as severe as dismissal.

The Board also has held that an employee who absents himself from his duty station without permission thereby makes himself subject to discipline often as severe as dismissal.

The dismissal of Claimant Robinson was justified by evidence adduced at the investigation as considered in light of Claimant's previous record of past conduct.

Article V of the August 21, 1954 Agreement states in pertinent part as follows:

- "1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.
- (c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer..."

Clearly, the rule requires that the Carrier must reply within 60 days of the date from which the designated officer of the Carrier receives the appeal.

The Organization has contended that the denial of the instant claim was not "mailed" within the 60-day time limit; in the instant case, the appeal was dated March 6, 1979 and was received on March 12, 1979. Under date of May 9, 1979, or on the 58th day, the denial was placed in the U.S. Mail for delivery. Therefore, there was no violation of the Time Limit Rule as alleged.

Therefore we conclude:

1. Claimant was afforded a fair and impartial investigation;
2. The evidence proved Claimant's guilt;
3. The discipline of dismissal was justified, and
4. There has been no violation of Article V of the August 21, 1954 Agreement.

Therefore the claim must be denied.

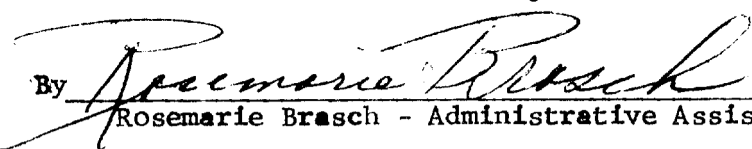
A W A R D

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 10th of March, 1982.