

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

That, in violation of the current agreement, Firemen & Oiler Stanley Rickabaugh, Firemen & Oiler, Hollidaysburg Car Shop, Consolidated Rail Corporation, Hollidaysburg, Pennsylvania, was unjustly dismissed from service of the Carrier for the alleged charges of:

1. Excessive absenteeism: 1/4/78, 1/5/78, 1/6/78, 1/9/78, 1/10/78, 1/17/78, 1/18/78, 1/23/78, 1/31/78, 2/9/78, 3/1/78, 3/2/78, 3/22/78, 3/27/78, 4/3/78, 4/4/78, 4/7/78, 4/20/78, 5/2/78, 5/3/78, 5/4/78, 5/31/78, 6/4/78, 6/12/78, 6/14/78, 6/19/78, 6/20/78, 6/29/78, 7/23/78, 7/25/78, 7/26/78, 7/27/78, 7/30/78, 7/31/78, 8/1/78, 8/2/78, 8/3/78, 8/6/78, 8/7/78, 8/8/78, 8/9/78, 8/10/78, 8/13/78, 8/14/78, 8/15/78, 8/16/78, 8/17/78.
2. Reporting late for work: 2/7/78, 2/15/78, 5/17/78, 6/26/78, 7/5/78.
3. Failure to report off work: 7/9/78.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 laborer with service date of April 10, 1977, at Carrier's Hollidaysburg Car Shop at Hollidaysburg, Pennsylvania, was charged with "... excessive absenteeism, reporting late for work, and failure to report off work ..." on various occasions. Pursuant to an investigation which was held in absentia on September 1, 1978, Claimant was adjudged guilty as charged and was dismissed from Carrier's service effective September 25, 1978.

Organization's basic position in this dispute is that Carrier's dismissal of Claimant was improper because Claimant's absence was due to a work-related back injury; that Claimant was in compliance with Rule No. 13 of the current agreement which requires notification to the General Foreman as soon as possible when an employee is detained from work for any cause; and "... Claimant presented

a statement from his physician, which stated he would not be able to return to work until October 4, 1978 due to a severe lower back pain."

As its last major area of argumentation, Organization contends that discharge is much too severe a penalty to impose given the extent of Claimant's alleged infraction (Second Division Award No. 1157, 1189, 1513 and 1543).

Carrier's position is predicated upon several separate yet interrelated arguments. First, Carrier maintains that when the issue was argued on the property the thrust of Organization's argument was an appeal for leniency and, according to Carrier, in light of such an appeal, "(T)he remission of discipline on the basis of leniency is solely a matter of managerial discretion, a discretion which the Board may not properly exercise ..." (Third Division Awards 18360, 11651 and 11914).

In addition to the foregoing and without diminishing the significance of same, Carrier further argues that: (1) Claimant's guilt has been proven not only by the uncontroverted facts of record but also by the fact that Claimant failed to appear at his investigation hearing; (2) the discipline which was assessed was commensurate with the gravity of Claimant's offense (Second Division Award 6240 and 6710); and (3) there are no mitigating factors which would serve to overturn or modify the penalty which has been assessed.

Carrier's final arguments which are contained in its Rebuttal Brief are that: (1) reference to Rule 13 as well as to the inclusion of the Physician's Statement, Exhibit "D", by Organization in its Submission is improper because such reference/information was not presented to Carrier either at the trial or at any time when the matter was discussed on the property and thus is barred from consideration by the Board at this late time; and (2) despite Carrier's contentions regarding the Board's consideration of either Rule 13 or the Physician's Statement, said evidence, according to Carrier, is insignificant because Rule 13 does not prohibit the Carrier from taking disciplinary action against an employee for failure to meet Carrier's reasonable attendance standards even if the employee provides notice of these absences, and the disputed Physician's Statement was submitted subsequent to Claimant's trial and dismissal.

This Board has carefully read and studied the complete record in the instant dispute and can find no good reason which would warrant either the recision or modification of the penalty which has been assessed. Carrier, unquestionably, has adduced sufficient probative evidence by which to sustain its position as presented herein. Over and above Organization's contentions regarding the validity of Claimant's absences ("injured back in work-related accident and then reinjured same in a fall at home"), the fact remains that Claimant had a prior record of attendance and absenteeism problems for which he had been disciplined previously; and, more importantly, an examination of the record clearly establishes that not all of Claimant's absences can be attributed to his alleged back injury which occurred on April 26, 1978. Furthermore, Organization's reliance upon Rule 13 and the fact that Claimant may have notified Carrier to report his absence on August 25, 1978, surely did not authorize Claimant's continuing absence beyond that one particular day -- if then.

Lastly, Claimant's proffering of his Physician's Statement in support of his absences, while obviously not a matter of record when the claim was handled on the property, is of relatively little import in this consideration in any event since such documentation could have/should have been made available by Claimant either prior to or at the time of the September 1, 1978 hearing, but, for some unknown reason, Claimant failed to do so. Surely, Carrier cannot be faulted for Claimant's own negligence in this regard; and, in such circumstances, Carrier's resulting actions cannot now be considered as being in any way arbitrary, capricious, unjust, or an abuse of managerial discretion.

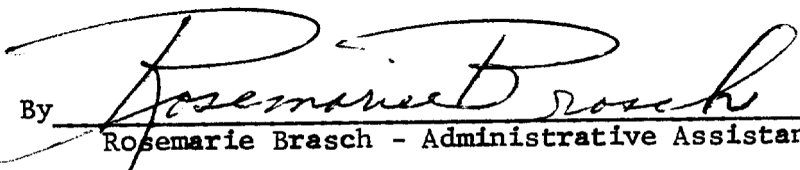
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1982.