

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

Parties to Dispute: (Lewis King
(Long Island Rail Road

Dispute: Claim of Employees:

Whether the dismissal of petitioner-employee, Lewis King by the Long Island Railroad ("Carrier") was an improper, wrongful and excessive disciplinary action which should be remedied by reinstatement to his position as Car Appearance Maintainer ("CAM") with back pay.

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 employes 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 were given due notice of hearing thereon.

Claimant, Lewis King, was employed by the Carrier since June 22, 1977. On March 8, 1982, Claimant was assigned to work as Car Appearance Maintainer on the 8:30 a.m. to 4:30 p.m. tour of duty. At approximately 1:15 p.m. that day, two Carrier officials conducted a quality control inspection and determined that the Claimant did not mop five cars on Track No. 1 and eight cars on Track No. 5. Those same officials were also unable to find the Claimant until 3:20 p.m. that day.

Claimant was dismissed from service after the investigation which found him guilty of two rule violations:

1. Leaving Company property without permission; and
2. Improper performance of duty.,

Claimant argues that he had worked a double shift on the day in question (16 hours) and that he was under pressure because of the long hours of work and marital problems. He admits that he was slow to return to work and had taken one hour and fifteen minutes of break time but blamed it on his physical and mental exhaustion. Claimant contends that based on his past performance as an honest and reliable employe and the fact that he has now solved his personal problems that the penalty of dismissal was excessive.

Carrier argues that Claimant is guilty as charged and that the discipline assessed is justified by the facts. Carrier argues that Claimant admitted not mopping the 13 cars and that he was late returning to work from his break.

Moreover, the Carrier points out that Claimant's past record shows that he has been progressively disciplined prior to his dismissal. Claimant's past record shows the following:

| | <u>Offense</u> | <u>Discipline</u> | <u>Date Imposed</u> |
|----|--|---|---------------------|
| 1. | Excessive Absenteeism | 5 work days suspension | 10/31/78 |
| 2. | Excessive Lateness and Early Quits | 20 work days suspension | 6/12/79 |
| 3. | Excessive Absenteeism | 60 work days suspension | 6/30/80 |
| 4. | Leaving Assigned Job and Company Property | Dismissal reduced to 60 work days suspension | 11/24/80 |

Carrier contends that Claimant's short period of service coupled with his extremely poor work record justifies his dismissal when viewed in conjunction with his proven and admitted guilt of the offenses charged.

There is no question that Claimant is guilty as charged. He has admitted that he failed to perform the work that he was supposed to perform and that he was out of his work area for an extended period of time. His excuse was that he was tired and he had marital problems. However, that is hardly a good excuse for not working and adequately performing one's job. He was performing overtime work on the day in question on a voluntary basis and was receiving premium pay for it. If he was unable to perform, he should have informed his supervisor and requested permission to leave.

Furthermore, the discipline that is assessed is justified by the facts. In Second Division Award No. 4873, the Board held:

"The Claimant did violate the Agreement by his failure to obtain proper permission to be absent from his position for several hours. He has made no showing that his absence was brought about by an emergency requiring him to absent himself."

Similarly, in upholding the dismissal in Award Nos. 13 and 14, Public Law Board No. 1994, the Board held:

"The Board finds that the record contains substantial competent evidence to support the Carrier's disciplinary action against the Claimant. The record reveals that the Claimant took an indifferent attitude toward his job responsibilities. Within a period of one month he walked off his job without notifying his supervisor because he did not feel up to working his assignment, and on the other occasion he failed to complete his assignment in a satisfactory manner, and then went to sleep in a darkened car in the course of his tour of duty.

When these breaches of duty are coupled to Claimant's prior discipline record which shows that between July 1977 and March 1979 he had been disciplined three times: once, for insubordination; another time for excessive absenteeism; and a third time for failure to perform assigned duties; on this record the Carrier could properly conclude that the Claimant neither wanted to, nor was capable of meeting the responsibilities and obligations subsumed under the employee-employer relationship. Under these circumstances it was neither harsh nor excessive discipline for the Carrier to terminate the relationship."

The precedent is well established that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed. While the administration of disciplinary action should not seem haphazard or capricious, it is clear that the imposition of discipline, and dismissal if necessary, is well within managerial discretion.

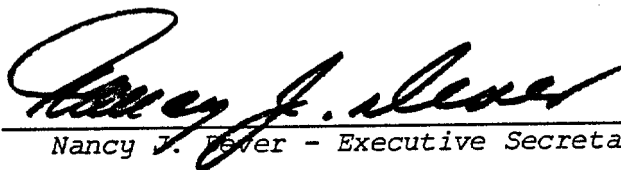
It is well settled that this Board will not set aside a penalty imposed by the Carrier unless it determines that the penalty was imposed in an arbitrary and unreasonable fashion. In this case we cannot find anything in the record to sustain the Claimant's position as to his guilt or as to the discipline imposed. Claimant was given numerous opportunities to conform his behavior to the rules and he failed. In November, 1980, he was dismissed and that dismissal was reduced to a 60-day suspension for the offense of leaving assigned job and Company property. We conclude that the dismissal of the Claimant was commensurate with the offense and his past record and we hereby deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984