

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Maine Central Railroad Company

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Firemen and Oiler Edward J. Murphy was unjustly suspended and dismissed from service of the Carrier following hearing held on December 17, 1981.
2. That, accordingly, the Carrier be ordered to make the aforementioned Edward Murphy whole by restoring him to Carrier's service with seniority rights unimpaired, restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages and, in addition, the amount of 10% (percent) annual interest on such lost wages.

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 waived right of appearance at hearing thereon.

Claimant Edward J. Murphy entered the employ of the Carrier at its Rigby Car Shop as a Laborer in 1956. He remained in that position until December 30, 1981 when he was dismissed from service following formal investigation and hearing on the charge of gross absenteeism.

The pertinent facts in this case are essentially undisputed. The record discloses that Claimant's work attendance record during the period 1976 through 1981 was significantly below par. Claimant worked as follows during this period:

1981	51 work days
1980	83 work days
1979	93 work days
1978	0 work days
1977	5 hours of work
1976	139 days of work

The record further reveals that Claimant's extended absences were the result of several physical incapacities, including alcoholism, emphysema, obesity and pulmonary condition, all of which were monitored by the Carrier's physician who advised the Claimant that he was not medically fit to work. There are numerous items of correspondence in the record which further indicate that the Carrier encouraged Claimant to do whatever was necessary to improve his physical condition. On November 2, 1981, the Carrier received a letter from Steven G. Johnson, M.D., stating the Claimant had been unable to follow any of the medical recommendations and conditions given by Dr. Johnson, and that his current problems were "alcoholism, poor physical conditioning, cigarette smoking and emphysema, obesity, and lack of motivation." Notice of hearing on the instant charge followed shortly thereafter on December 11, 1981. There is no evidence in the record to show that any other means of discipline was previously assessed Claimant for his continued absenteeism.

The Organization's principal argument is that the penalty of dismissal in this case is arbitrary, capricious and an abuse of managerial discretion because no evidence was adduced at hearing to show that the Carrier complied with its system of progressive discipline.

The Carrier, for its part, implicitly acknowledges that it did not utilize the recognized system of progressive discipline in this case. Instead, the Carrier maintains that its efforts included discussions with the Claimant, regular review of his physical condition, an agreement dated August 2, 1979, in which Claimant agreed to take certain steps to improve his health, and various follow-up procedures utilized by the Carrier to encourage Claimant to pursue the various recommended rehabilitation programs. In addition, the Carrier's position is that lesser discipline would not improve Claimant's absenteeism and is therefore pointless. With regard to the merits, the Carrier contends that the charge of gross absenteeism was fully substantiated at the hearing and the discipline afforded Claimant entirely appropriate.

After careful review of this record, the Board finds that while Claimant's absenteeism is indeed excessive, the Board is also of the opinion that termination in the instant case is improper given the Carrier's admitted failure to utilize the system of progressive discipline agreed upon by both parties. In so finding, the Board does not wish to convey that it is in any way dismissing the seriousness of the charge as a general proposition, or that it is discounting the Carrier's efforts to assist Claimant in regaining his physical health. Yet the Board does not find from the evidence presented that imposition of the ultimate disciplinary penalty is justified without first resorting to lesser forms of discipline. In ruling to reinstate the Claimant, the Board also finds that no backpay compensation or other monetary benefits shall be awarded, and that Claimant's return to duty is conditioned upon his physical ability to perform the work of his position. Assessment of Claimant's current physical condition shall be made by a physician appointed by the Carrier.

Claim sustained in part. Claimant shall be reinstated with full seniority rights upon furnishing proof of physical fitness, but without backpay or other monetary benefits.

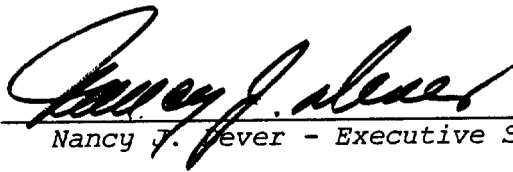
A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Second Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1984.