

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling Agreement, as amended Service Attendant W. A. Avery was unjustly dismissed from service of the Seaboard System Railroad on January 9, 1984, after a formal investigation was held at 9 a.m., December 13, 1983, by Staff Assistant Officer J. F. McNary.
2. That accordingly Service Attendant W. A. Avery be restored to his assignment at South Louisville Shops, Louisville, Kentucky, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid and compensated for all lost time effective January 9, 1984, and the payment of 10% interest rate added thereto.

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.

The Claimant, a Service Attendant, Louisville, Kentucky, was charged with being absent without permission for the period September 13 through September 24, 1983 after being cited on June 15, 1983 for absence for period June 2 through June 11, 1983.

He was notified that Investigation relative to the charge would be conducted on October 6, 1983. He was also advised that his personal record would be made a part of the Investigation.

Subsequently the Investigation was delayed account the Claimant's sickness and rescheduled when the Claimant returned to duty. The Investigation was then conducted on December 13, 1983.

In regard to that part of the charge concerning the absence for the period June 2 through June 11, 1983 the Claimant was notified in letter dated June 22, 1983 as follows:

"This will confirm meeting held in the office of J. F. McNary, Staff Assistant, on Wednesday, June 15, 1983, at approximately 3:15 P.M., with the following present.

W. A. Avery, Service Attendant (the Claimant)
J. B. Anderson, Local Chairman
L. W. Bloyd, Asst. Dept. Foreman
J. F. McNary, Staff Assistant

Charge letter was read to you by Mr. McNary, charging you with being absent from duty, copy attached.

At the request of your local chairman, Mr. J. B. Anderson, it was agreed that investigation would be delayed pending your agreement to participate in alcohol counselling under the direction of Mr. J. O. Sullivan, Employee Rehabilitation Counselor, and attend all meetings, etc. set up by Mr. Sullivan.

Mr. Sullivan will make reports to this office on your attendance and your foreman has been instructed that if you lose time at work or have any hint of an alcohol problem, they likewise are to let me know and investigation can be rescheduled for discipline.

All of the above you agreed to on June 15, 1983."

That letter was made part of the record.

At the Investigation, and after the participants had been identified, the Claimant's Representative stated that the Claimant wanted to address the Investigation Committee. The Claimant then stated:

"Mr. Avery: To the committee, my Name is W. A. Avery, Id #110792, I admit that I was wrong to all the charges that are made against me and plead guilty to them. One thing I would like to say is I have been having trouble at home with my wife and still having trouble with the Law-Suits. I (sic) was so, that I could hardly think. Sometimes I didn't know whether I was going or coming. Somebody could talk to me and I would just forget what they said, most of the time and I still go on with my life. It almost destroyed me but I've gotten over it a little bit and I'm guilty of all charges. Thank you."

The Claimant's address to the Committee was followed by these Questions and Answers:

"Mr. McNary: Mr. Avery, you were charged with absenteeism, without permission for a period of September 13, through September 24. After having been cited on June 15 for absence for period of June 2 through 11. The investigation that we had scheduled previously was again an absence problem and through a mutual agreement between your Local Chairman and yourself that you would have agreed to an alcohol rehabilitation council. Is this correct?

Mr. Avery: Yes Sir.

Mr. McNary: Are you still under the care or going to this alcohol council?

Mr. Avery: Well, I haven't been for a while. I have been having so much trouble at home. I stay around so as to answer the phone. My Lawyer, Mrs. Vickie Norfin, she calls me. She is trying to fix things up so I won't lose all of my house. My wife already has all my furniture.

Mr. McNary: Then, you are pleading guilty to the two periods of absenteeism, is this correct?

Mr. Avery: Yes Sir.

Mr. McNary: Mr. Anderson (the Claimant's Representative), do you have any questions of Mr. Avery?

Mr. Anderson: No questions, no comments. Thank you, Sir.

* * *

No procedural objections were raised at the Investigation.

Now comes the Organization asserting that the Claimant was unjustly treated, that the Carrier was unjust in dismissing him and that dismissal was excessive and uncalled for in view of his admission of guilt. This Board, however, is confined by the axioms set forth in a long line of Awards of this Board to reviewing the Carrier's decision and may not set it aside unless it was arbitrary, unreasonable or discriminatory. On the record before us, we can make no such finding. Accordingly, we must deny the claim.

Form 1
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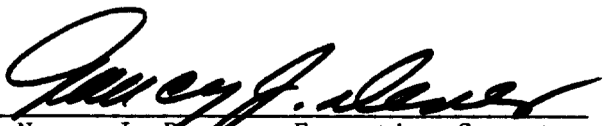
Award No. 10785
Docket No. 10847
2-SSR-FO-'86

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of March 1986.