

Award No. 2568

Docket No. 2382

2-PRR-BK-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Blacksmiths)**

PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

"1. That under the current agreement Blacksmith Welder Robert Charles Rumbaugh was unjustly dealt with when he was dismissed from service June 22, 1955.

2. That accordingly the Carrier be ordered to:

(a) Restore Blacksmith Welder seniority rights

(b) Grant Blacksmith Welder Rumbaugh a leave of absence."

EMPLOYEES' STATEMENT OF FACTS: Robert Charles Rumbaugh, blacksmith welder, hereinafter referred to as the claimant, was employed by the Pennsylvania Railroad September 8, 1922, working at Altoona Works since May 14, 1924. In March, 1955, the claimant made request upon the carrier for a leave of absence to begin April 4, 1955 for the purpose of taking his wife to California for her health, furnishing the carrier with a statement from his wife's attending physician in support of his request. The carrier refused to grant the claimant a leave of absence as requested. The claimant continued to work on his assigned position until and including May 9, 1955, at which time the claimant made a verbal request for a nine month's leave of absence to his immediate foreman, Mr. L. S. Harrity, for the purpose stated herein. Mr. Harrity refused to grant the claimant a nine month's leave of absence but did agree to grant the claimant a three week's leave of absence, which is substantiated by affidavit sworn to by Mr. C. E. Dumm, a fellow employe and identified here as Exhibit A. The carrier served notice on the claimant dated May 18, 1955 that he was charged with being absent from duty without permission on May 11, 1955 through May 18, 1955, inclusive, and that the hearing date had been scheduled for June 21, 1955 at

Likewise in Award 6866, Third Division, Jay S. Parker, stated the principle as follows:

"* * * Our duty, under all our decisions (See, e.g. Awards Nos. 6103, 4749, 4269, 3985 and cases there cited) is to confirm the Carrier's findings and the discipline imposed unless the record convinces us its action with respect thereto was arbitrary or capricious. Under the confronting facts and circumstances we are unwilling to say the record is susceptible of any such construction and, as has been previously indicated, it does not warrant a conclusion Claimant was denied a fair hearing."

There are numerous other awards of the National Railroad Adjustment Board to the same effect.

The carrier submits there is no evidence in the record that its action in disciplining the claimant in this case was in any way arbitrary, malicious, or in bad faith; and contends that, on the other hand, discipline was imposed upon the claimant only after a proper trial and on the basis of substantial evidence of the claimant's guilt of the offense with which charged. The claimant was afforded all of the rights granted to him by the applicable agreement. His voluntary refusal to attend the trial or to have representation present cannot now be properly raised as an objection to the fairness or impartiality of the trial. By his failure to attend after proper notice or to have representation present, claimant has waived his right to object to the trial proceedings.

Therefore, your Honorable Board is respectfully requested to deny the claim in this matter.

A final comment will be made concerning Part (b) of the employes' claim to the effect that carrier should be ordered to grant claimant Rumbaugh a leave of absence.

The carrier asserts that your Honorable Board is not empowered to make an award of this type since the conditions on the carrier's property might not warrant the granting of a "leave of absence" even if claimant's seniority rights are restored. The carrier asserts therefore, that even if claimant's seniority were to be restored, this Board could not properly order the carrier to grant claimant a leave of absence at that time, but rather carrier's actions must then be governed by the appropriate rules of the agreement, particularly Rule 8-H-1 as applied to then existing conditions.

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.

The parties to said dispute were given due notice of hearing thereon.

Claimant was dismissed from service for having been absent from duty on six specified days. The organization asserts that claimant was "unjustly

dealt with" and asks that his seniority rights be restored and that he be granted a leave of absence.

There is in the record a copy of a letter from carrier's manager-Labor Relations to the organization's president dated June 17, 1957, advising that according to a press release the claimant died on June 1, 1957, but this is not such a showing as would justify this Board in accepting the death of the claimant as an established fact.

The transcript of the hearing that resulted in the dismissal of the claimant discloses that the only persons present were the employee who reported the proceedings and L. S. Harrity, foreman, who preferred the charges and who acted as the carrier's hearing representative. No witnesses were heard and no documents were submitted. In the transcript appears the following statement under the heading of "Remarks"

"On Monday Morning May 16, 1955, Foreman L. S. Harrity, accompanied by J. W. Gramley, Gang Foreman, went to Mr. Rumbaugh's home and found that he was not there and was told by a neighbor lady that he had left for California. Mr. Rumbaugh has not returned to duty and is still absent as of the date of this trial without permission."

If this statement is to be regarded as evidence it must necessarily be credited to Mr. Harrity and, on that view of the case, the hearing could hardly be regarded as a fair one since he acted in the incompatible positions of prosecutor, sole witness and judge.

The record contains much extraneous data relating to whether the claimant's request for a leave of absence was reasonable or unreasonable and as to whether he was granted a leave and, if so, for how long. These facts might have been pertinent at the hearing but cannot be considered now. We must resolve the claim on the facts presented at the hearing and no facts were produced that would justify discipline.

Inasmuch as the claim is merely for the restoration of claimant's seniority rights and for a leave of absence, no money demands are involved and none can accrue by virtue of a sustaining award. If living, the claimant will be entitled to be restored to his position with seniority unimpaired but without compensation for the time lost, and if he is deceased the award will relate only to the clearing of his service record as of the date of his death.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.