

Award No. 4160
Docket No. 4120
2-CRI&P-FO-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen & Oilers)**

**CHICAGO, ROCK ISLAND & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Laborer Luther Roby was unjustly dismissed from the service of the Carrier on January 19, 1961.

2. That accordingly the Carrier be ordered to reinstate this employee with all of his seniority and service rights intact and pay for all time lost effective with January 19, 1961.

EMPLOYEES' STATEMENT OF FACTS: Laborer Luther Roby, hereinafter referred to as the claimant, entered the service of the carrier on May 29, 1945, remaining therein until Jan. 19, 1961, or more than 15 years.

Following the completion of his regular work week assignment in the shop on Friday, Dec. 23, 1960, the claimant was automatically off on his rest days of Saturday and Sunday, Dec. 24 and 25, and was further laid off by the carrier on Dec. 26, 1960 account the holiday.

On Dec. 27, 1960, the claimant was required to be in his lawyer's office at 9:30 A.M., immediately prior to his required appearance in Civil Court at 11:30 A.M., same date.

Prior to Dec. 1, 1960, the claimant's entire service with the carrier had been confined to the carrier's power plant at 49th St., under the immediate supervision of a chief engineer.

On the abolishment of his position in the power plant due to technological changes made in the equipment therein, he exercised his seniority on a position in the shop on Dec. 1, 1960. This placed the claimant in an entirely new and

has an elaborate set of safety rules to prevent just such occurrences. Therefore, it is conclusive the man had no more regard for those rules than he did for the other rules which employees are expected to comply with.

This man has already been extended leniency or equity for the same violations prior to this instance. His record clearly indicates he has no respect for rules or feels obligated to comply with them.

There is not one thing in his record which even suggests discipline should be tempered, but there are many items which indicate sterner discipline should have come before. The man has no respect for adherence to the facts, the rules or of conducting himself in a manner so as not to subject the railroad to criticism in the handling of his personal affairs as required by another rule.

There was absolutely no justification to allow the claimant to remain in the service of the carrier and he was dismissed for absenting himself from work without securing permission—and such discipline was assessed after review of his personal record.

The Board has consistently held that once a man's responsibility for rules violation has been established, the man's personal record could and should be reviewed to determine the measure of discipline. The Board has also consistently held it will not substitute its judgment for that of carrier officers unless it is obvious they have acted in a manner which tends to abuse their use of discretion. There was no such action or abuse in this case.

The claimant was properly dismissed and his reinstatement and claim should be denied.

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 employees 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant, Luther Roby, entered the Carrier's service as a laborer on May 29, 1945, and worked continuously for the Carrier until January 19, 1961, when he was found guilty—following an investigation—of being absent on December 27, 1960 without permission and dismissed from Carrier's service.

Rule 30, of the controlling Agreement, is involved and that Rule reads as follows:

"ABSENCE FROM WORK WITHOUT LEAVE:

In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account

of sickness or for any other good cause shall notify his foreman as early as possible."

The record establishes the following facts:

1. The Claimant was absent on December 27, 1960,
2. The Claimant did not notify the foreman of his absence.

The questions the Board must answer are:

1. Was the Claimant unavoidably kept from work?
2. Was the Carrier's disciplinary action unjust and excessive?

For the answers to those questions, *supra*, we turn again to the record. First let us examine the reason for the Claimant's absence—namely—he was summoned on December 24, 1960 to appear in Civil Court at 11:30 A. M. on December 27, 1960 to answer a garnishment action against him. At 9:30 A. M., on that same date (December 27, 1960) the Claimant had to be at his attorney's office. The Claimant had no direction or control over his activities for at least a major portion of December 27, 1960. Inasmuch as he had no control over the reason for his absence it logically follows that he was "unavoidably kept from work."

Next we turn to the question "Was the Carrier's disciplinary action unjust or excessive?" Looking at the "Transcript of Personal (Record) of Luther Roby" we find that nearly eleven years elapsed after Claimant entered Carrier's service (May 29, 1945 to May 8, 1956) before a single critical notation appeared on his record. Over three years passed before the second critical notation appeared on the Claimant's record (May 8, 1956 to July 29, 1959). The third and final critical notation on the Claimant's personal record is the one that now concerns us.

In more than fifteen years of service there are only three critical notations on the Claimant's Personal Record. Is this the record of an undesirable employee? We say it most assuredly is not! Consequently, the Board must conclude that the Carrier's disciplinary action was unjust and excessive.

It is the Board's decision that the Carrier reinstate Claimant with all his seniority and service rights unimpaired and intact and that the Claimant be paid for all time lost since January 19, 1961.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1963.