

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers, A.F.L. - C.I.O.
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company unjustly removed Machinist Helper W. J. Torres from service on May 30, 1973 for alleged falsifying of Form 25300 (time card) on May 15, 1973.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Helper W. J. Torres at the pro rata rate of pay for each work day beginning May 30, 1973, until he is reinstated, in addition he receive all fringe benefits flowing to any other employee in active service including vacation rights and seniority unimpaired. In addition to the money amounts herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim; also for his personal record to be cleared by letter of this discipline.

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.

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

This dispute centers on the dismissal of a machinist helper with fifteen months service for falsification of his time card on May 15, 1973, and "poor attendance record."

The record, particularly testimony of General Foreman Landers and Foreman Wells, establishes that Claimant did enter eight hours (from 7 a.m. to 3 p.m.) on his time card for May 15, 1973, although he actually worked ten minutes less than that amount (from 7:10 a.m. to 3 p.m.). We are not in a position to discount the ten minutes involved or to substitute our judgment for that of Carrier as to the gravity of the offense. The fact that Claimant was not compensated for the ten minute period in question does not detract from his misconduct for the claim to more than the time he worked was manifestly improper in and of itself and provides a proper basis for discipline.

In deciding that dismissal is appropriate discipline in this case, Carrier relied not only on the time card incident but also upon Claimant's attendance record. It was not error for Carrier to consider attendance since the notice of investigation that had been duly served on Claimant stated that the investigation would be held to develop the facts and place your responsibility, if any, in connection with the falsification charge and "review your attendance personal record." This notice was sufficiently clear to apprise Claimant of the nature and gravity of the hearing and that he should be prepared to defend his position on both the falsification and attendance issues.

The evidence shows that Claimant had been absent on forty occasions during his fifteen months of employment and that his attendance record did not improve although his shortcomings in that regard and the need for improvement were emphasized in conferences with his supervisors, written communications and disciplinary action (30 days deferred suspension for absenteeism administered on June 29, 1972). In the light of this record and the notice of investigation, Claimant should have known that his attendance record would be considered at the hearing and we find Petitioner's objection that he did not receive adequate notice without merit. The record does not establish that the numerous absences were due to extenuating circumstances or that Claimant would be a sound attendance risk in the future.

On the basis of this record, there is no persuasive ground for setting aside Carrier's findings of fact and assessment of discipline. The claim will be denied.

A W A R D

Claim denied.

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Award No. 6909
Docket No. 6792
2-MP-MA-'75

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1975.