

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (a) That Machinist Apprentice Barry Brooks was unjustly dealt with under the controlling agreement and thereby damaged when he was deprived of his employment on March 13, 1974, as a result of being removed from the service of the Carrier on the charge of "Excessive absenteeism and being absent from his regular assignment on February 13, 1974 without permission."
- (b) That accordingly Machinist Apprentice Barry Brooks be compensated for all time lost and, further, that he be made whole for any and all benefit losses suffered as a result of Carrier's action against him.

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.

The Claimant is charged with excessive absenteeism and being absent from his regular assignment on February 13, 1974 without permission. His employment dates back to 1967 and this is not the first time his absenteeism has been the subject of disciplinary action. In 1973 he was subject to an investigation on charges of excessive absenteeism and as a consequence he was returned to his job with the admonition that his attendance should improve. The record indicates Claimant's absences were reduced for several months in the middle and latter part of 1973. In December, 1973 three single men moved into a neighboring house and his problems began. Coincident with their arrival there were breaking and entry occurrences at other neighboring homes; Claimant's wife observed these individuals peeping in their

windows and doors; Claimant's wife was terrorized. Claimant was working the night shift and his wife feared being alone. As a consequence Claimant felt obligated to lay off and protect his wife. With respect to the February 13, 1974 absence, Claimant maintains he called twice but could not make a connection with the operator.

The evidence produced at the investigation demonstrated Claimant's guilt, however, we find certain mitigating circumstances that make the discipline of dismissal excessive in this case. The Second Division Award 6960, Referee David P. Twomey, similarly involved charges of excessive absenteeism. In that Award the Board made a statement in its Findings which is applicable here and is adopted herein:

"It is the opinion of this Board that the discipline imposed by Carrier has served its purpose: we therefore order the Claimant returned to service without back pay, but with all other rights unimpaired. We order that the disciplinary action be made part of Claimant's record. The Claimant should understand without any equivocation that it is absolutely mandatory and necessary that he maintain a reasonable attendance record and that he be a dependable employee of the Carrier. It goes without saying that the Claimant is now being given a final opportunity to correct his improper conduct. We expect him to fully live up to his obligation to his job."

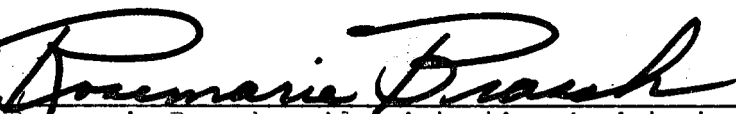
A W A R D

Claim sustained to the extent indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of January, 1976.