

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7044
Docket No. 6880
2-WT-CM-'76

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

Parties to Dispute: (System Federation No. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
(Carmen
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(The Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement, Car Cleaner, J. M. Duckett, was unjustly and excessively dealt with when he was dismissed from the service of The Washington Terminal Company effective July 29, 1974.
2. That accordingly, The Washington Terminal Company be ordered to return Car Cleaner, J. M. Duckett, to the service of the Carrier with seniority and vacation rights unimpaired and compensate him for all time lost since July 29, 1974.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant was dismissed after he was found guilty of "Loss of time from duty, June 15, 20, 27 and 30, 1974". The Employees maintain that Rule 18 of the agreement is controlling while the Carrier holds to the view that this rule is not applicable. No specific rule is cited as a foundation for Carrier's charges. The record does not provide us with a basis for deciding whether or not Rule 18 is controlling here. We can only look to the evidence and arguments developed on the property for resolution of this dispute.

The evidence developed at the hearing is uncontroverted that Claimant's unreported absence on June 15 was related to a mistake in a job bidding situation and Claimant was off that date based on instructions he received from a gang leader. At the hearing and panel discussion before this Board it was recognized and confirmed that the June 15th absence involved a misunderstanding.

The June 20th absence is designated in Carrier's records, introduced at the hearing, as "June 20 - reported **but absent**". **No further details were** provided by Carrier's witness. Claimant was asked at the hearing to explain this absence and he answered: "I have a calendar in my locker, which I can check. I don't remember that." He never reported back and as a consequence the record is not complete as to that date.

We conclude that Claimant did not lose time on June 15th in the sense that it was an unreported absence. There is a loss of time on June 20th but it was a reported absence. The record does not provide us with a basis to conclude that it was or was not unavoidable or based upon a reasonable, good cause. The Carrier has failed to satisfy its burden of proof with respect to these two dates. We do not believe that Claimant's failure to explain the June 20th absence absolved Carrier of this burden under the circumstances.

The loss of time on June 27 and 30 involved two separate instances of lateness by Claimant and in each case the Claimant was sent home by supervision. In one instance he was late a matter of minutes due to a parking problem; in the other the lateness was something over two and one half hours related to a problem of delays in retrieving his family at a chartered bus depot. In both instances it is not clear whether we are discussing the loss of time related to lateness or the loss of the whole day. The matter was raised as a question at the hearing but it never developed into an issue joined on the property. We conclude, however, that we need not consider these in view of Carrier's failure to sustain the burden of proof as to the earlier dates.

In accordance with the awards of this Board, Carrier has the obligation to fully and effectively justify its disciplinary penalty. In addition, the failure to sustain a current infraction prohibits review of Claimant's record of absences previously. See Award 6215. We believe application of these principles would indicate that Claimant was improperly dismissed based upon this record.

We conclude, **however**, that Claimant's record of attendance involved deficiencies. We cannot sustain that aspect of the claim related to compensation for lost time. As a consequence the claim is sustained in accordance with these findings.

A W A R D

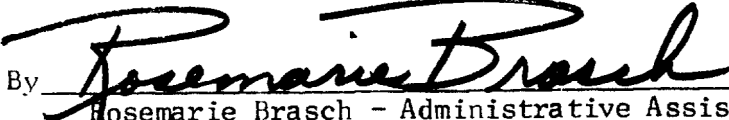
Claim sustained in accordance with the Findings.

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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 27th day of April, 1976.