

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: (Frank Pellegrino
(Penn Central Transportation Company

Dispute: Claim of Employees:

Employee claims restoration to seniority and compensation consisting of the difference between his railroad pay and his actual earnings for the period from the date of his dismissal until the present time, in accordance with Section 7-A-1(d) of the contract. Employee claims that he was improperly dismissed on the charge of being off duty without permission from February 8 to February 15, 1972."

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 waived right of appearance at hearing thereon.

On February 15, 1972, Notice of Trial was issued to Claimant for "Being Off Duty Without Permission From February 8 to February 15, 1972". Trial was held on March 22, 1972. Claimant was notified on May 15, 1972, that he was dismissed from service with Carrier. He appealed this discipline by letter dated May 18, 1972. Appeal, based on leniency, was heard by the Superintendent of Labor Relations and Personnel on June 2, 1972 and denied by letter dated June 7, 1972. A joint submission was requested by the Employees on June 26, 1972. A Proposed Joint Statement of Agreed-Upon Facts was forwarded by Carrier to the Local Chairman by letter dated June 30, 1972. On February 21, 1975, Carrier received the Employees' position for submission of this dispute and an agreement to the proposed facts. The appeal was discussed at a meeting held on April 9, 1975 between the parties' representatives. By letter dated April 30, 1975 to the General Chairman, Carrier reduced Claimant's dismissal to a suspension, with all time held out of service to apply his discipline. Carrier transmitted a letter to Claimant on May 12, 1975 advising that he (Claimant) should report to the Medical Department on May 16, 1975 for a return to duty medical examination. By letter dated July 3, 1975 Claimant was advised to report for medical examination on July 14, 1975, together with the advice that his failure to report or show cause why he could not report would result in his being furloughed and subject to recall.

The record discloses that Claimant's exhibits number one and two were not handled on the property and therefore can not be considered in the appeal to this Board. Also, there is nothing in the record to indicate that Claimant's wife was not allowed to testify at the investigation hearing. It must be concluded because of the expiration of time to perfect this appeal and also because of the fact Claimant refused to report to work upon invitation of Carrier, that Claimant had very little interest in his job. He was charged with "being off duty without permission from February 8 to February 15, 1972". The transcript clearly shows that Claimant did not comply with Rule 8-I-1, which is:

"An employe detained from work for any cause must notify his Foreman as soon as possible."

Claimant never notified his Foreman at any time that he was going to be absent from February 8 to February 15, 1972. Members of his shop attempted to contact Claimant throughout the period involved, without success.

It appears to this Board that an unreasonable length of time expired in perfecting the appeal from the date Carrier forwarded the Proposed Joint Statement of Agreed-Upon Facts on June 30, 1972 and the date Carrier was advised that Claimant agreed on the Proposed Joint Statement of Facts, February 21, 1975, almost three years later. It appears that there was sufficient evidence to find the Claimant guilty of being off duty without permission. It is well established that Carrier may grant leniency but that this Board has no power to grant leniency. The record also indicates that Claimant was not diligent in perfecting his appeal or progressing the same promptly. The very purpose of the Railway Labor Act was to provide for prompt disposition of disputes between carriers and their employees and for other purposes. When the rights conferred by this Act are delayed for an unreasonable time; preventing prompt disposition of disputes, then the purpose of the Act is destroyed.

For the above reasons, this Claim will be dismissed.

A W A R D

Claim Dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of November, 1976.