

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

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Carman J. R. Dunavent was unjustly dismissed from service in violation of the current agreement on May 16, 1974, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
 - (a) Restore J. R. Dunavent to service with seniority rights, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensation for all lost time plus 6% annual interest.
 - (b) Reimburse J. R. Dunavent for all losses sustained account of loss of coverage under health and welfare and life insurance agreements during the time held out of service.

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 was charged with excessive absenteeism from his regular assignment as a Carman at Decoursey and was dismissed from service, after formal investigation, on May 16, 1974. The record shows that he was originally employed on August 12, 1964, transferred to Decoursey on March 1, 1965, and established his seniority as a Carman on January 27, 1970.

Petitioner seeks a sustaining award on the grounds of procedural defects in the conduct of the investigation in that the officer conducting the investigation, the Master Mechanic, made a prejudicial statement concerning the charge against claimant. Petitioner averred that this statement, together with other improprieties of the Master Mechanic during the investigation, show conclusively that the claimant had been adjudged guilty of the charge before the fact. With the exception of the following statement and other improprieties were challenged at the time of the investigation and removed from the record of the investigation.

Statement of officer conducting the investigation:

"The reason you have been called in to the office concerning your absenteeism results from the fact that your absenteeism exceeds that of any other carmen employed at Decoursey, during the years 1972 to April 18, 1974, and none of your sicknesses have resulted in one day's hospitalization. That's all I have."

There appears in the transcript of the investigation another statement, made by the claimant's supervisor, as follows:

"Q. Would you please give what information you can concerning Mr. Dunavent's absenteeism and your handling with him concerning this matter.

"A. He was absent 79 (times) in 1972, 113 days in 1973 plus a 30 day leave of absence, total 143 days. And in 1974 thru April 11th, absent 50 days. I gave Mr. Dunavent a letter 11/22/1971 and also 2/2/73 about his excessive absenteeism and received from him on 2/6/73 statement that he would do better. I have had him in the office several other times and talked to him about his excess absenteeism. Each time he assured me he would do better. But records speaks for its self that he didn't do much better. That's all.

"Q. On November 21, 1972 I had Mr. Dunavent in my office and you and Mr. T. F. Polley, Local Chairman, Brotherhood of Railroad Carman of U.S. & C. were present and Mr. Dunavent's excessive absenteeism was again brought to his attention. Do you recall that meeting?

"A. Yes."

This latter exchange was not refuted by the Organization.

It is to be noted that during a period spanning approximately twenty eight (28) months the claimant had been absent from duty a total of 272 days and had been cautioned in writing and verbally on more than one occasion concerning this matter. Appearing in the record before us is a statement from the claimant's doctor covering the period in question. This statement

shows a total of twenty (20) visits by the claimant for treatment, one of which covered thirty (30) days off work due to a fractured bone in the left hand, for a variety of ailments.

In view of the fact that the alleged improprieties of the official conducting the investigation were stricken from the record, with the exception of that official's statement quoted herein, and the fact that the discipline was assessed by the Division Superintendent who reviewed the record and not the officer conducting the investigation, it is our opinion that the challenged statement, in and of itself, was not sufficient to deprive the claimant of a fair and impartial investigation. While we do find that the investigation demonstrated that the Claimant was guilty of the charge it is the opinion of the Board that the penalty of dismissal was excessive in this case and that it has served its purpose. The Claimant is put on notice, by this Award, that it is necessary that he maintain a reasonable attendance record in the future and it is expected that he will live up to that obligation. In this regard, we direct that the Claimant and his representative meet with his immediate supervisor to reaffirm and remove any doubt in the mind of Claimant what his obligations are regarding his attendance conduct. For the reasons stated we will order that the Claimant be returned to service without back pay but with all other rights unimpaired.

A W A R D

Claim sustained as per Findings.

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 4th day of March, 1977.