

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. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville & Nashville Railroad Company unjustly dismissed Electrician T. E. Wibbels from their service by notice letter dated January 10, 1975, subsequent to hearing proceedings held on December 2, 1974 for alleged excessive absenteeism, which Carrier alleges caused Petitioner's failure to properly protect his job assignment.
2. That, accordingly, the Louisville & Nashville Railroad Company be ordered to restore Electrician T. E. Wibbels to the Carrier's service with seniority rights unimpaired and compensated for all wage loss commencing with the date of his discharge, January 10, 1975, and continuing thereafter until such time as he is restored to service.
3. That the Louisville & Nashville Railroad Company be further ordered to make Electrician Wibbels whole with respect to all rights, privileges and benefits associated with his railroad employment, such as, but not limited to vacation, health and welfare and insurance benefits.

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.

Claimant is an electrician with the Carrier for eight and one half years. Based upon his record particularly the two prior years, he was charged with excessive absenteeism from his regular assignment. A formal notice of hearing, scheduled for November 8, 1974, was postponed until December 2, 1974. Following such hearing on December 2, 1974 the Claimant

was dismissed from service. Thereafter the decision was appealed to progressively higher levels of Carrier officers and was denied.

It is the Employees' contention that Claimant was unjustly dealt with in that his dismissal was arbitrary and capricious. Specific reference is made to Carrier's failure to sustain its burden of proof insofar as it merely placed in the record a "computed listing purporting to show Mr. Wibbel's work record...along with prior disciplinary notations (reprimands)." The point is made that no evidence was presented that Petitioner had absented himself for other than good cause.

The Employees contend that Claimant was absent a number of times but he complied with Rule 22 which provides:

"An employee detained from work account of sickness or other good cause shall notify his foreman as early as possible."

It is argued on behalf of Claimant that he met this requirement and Carrier failed to carry its burden to prove otherwise. Further, it is pointed out the investigation hearing was opened with a recitation by Carrier of Claimants' past record, including disciplinary actions for absenteeism, covering the entire span of his employment.

We conclude Claimant had an unsatisfactory attendance record. Nevertheless, there is a basis in his arguments to invoke the conclusions reached in our Award 7228 (Roadley). We believe the two cases are sufficiently similar to justify a sustaining award on the same basis. Accordingly, we adopt herein the language of that award as to the conclusions, the remedy and the admonition, as follows:

"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."

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Award No. 7338
Docket No. 7227
2-L&N-EW-'77

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 29th day of July, 1977.