

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (System Federation No. 105, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Union Pacific Railroad Company

Dispute: Claim of Employees:

- (1) That the Carrier has unjustly dealt with Carman, K. G. Vermeulen, Portland, Oregon Albina Shops, when he was dismissed from service on August 28, 1976 for allegedly violating Rules 700 and 702 of the Rules and Instructions of the M.P. & M. Department.
- (2) That accordingly the Union Pacific Railroad be ordered to reinstate K. M. Vermeulen to his former position as stated in Rule 35 of the Controlling Agreement dated September 1, 1949, which was changed to Rule 37 in the Revised Agreement dated November 1, 1976, with all vacation and seniority rights, all Health & Welfare Insurance Benefits, all credit under Railroad Retirement and Unemployment Insurance Benefits, pay for all time lost at the pro rata rate of pay of a Carman during the period of his dismissal, and any other benefits he would have earned while dismissed from 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.

Claimant was removed from service of the Carrier on August 28, 1976, following an investigative hearing for violation of Rules 700 and 702 which read as follows:

Rule 700

"Employes will not be retained in the service who are careless of the safety of themselves or others,

"insubordinate dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

Rule 702

"Employees must attend to their duties during the hours prescribed, reside where required by the management, and comply with instructions from proper authority. They must not absent themselves from duty, exchange duties with or substitute others in their place, nor engage in other business without proper authority."

The record provides ample evidence to the Board that, as claimed by the Carrier, the Claimant was absent without proper authority for 17 minutes on July 23, 1976, and 20 minutes on July 26, 1976, and also falsified his time card on these same dates to disguise his absences. Claimant had in excess of 27 years' service with the Carrier at the time of his removal.

If the charges which form the basis for the removal action stood entirely by themselves, there would be reason to give consideration as to whether or not the penalty of permanent removal from service would be appropriate. This is, however, not the situation in this case.

Claimant was twice previously removed from service -- in 1972 and 1973 -- and later reinstated on a leniency basis. The latter removal was for violation of the same rules as charged herein. Claimant was then advised as to the consequences of future misconduct. The Carrier properly exercised its right to consider the work record of the employee, and offered the Claimant the opportunity to confirm this record at the investigative hearing.

The discretionary exercise of leniency by the employer in previous instances can properly be utilized as a guide to and measure of further disciplinary action, if and when later proven incidents of rule violation occur. The Board has no basis on which to question the consequences to the Claimant of his actions on July 23 and 26, 1977.

A W A R D

Claim denied.


NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

Form 1
Page 3

Award No. 7688
Docket No. 7617
2-UP-CM-'78

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1978.