

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

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement George P. Janusiak, Machinist Helper, Milwaukee, Wisconsin, was improperly dismissed from service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Carrier, effective November 19, 1975. Dismissal was the end result of an investigation held on October 7, 1975 for Claimant's alleged failure to protect his assignment, failure to notify his foreman that he would be detained from work, and for taking unauthorized leave of absence on September 26th and 29th, 1975.
2. That accordingly, the Carrier be ordered to restore George P. Janusiak, hereinafter referred to as the Claimant, back to service with full seniority and vacation rights, and be compensated for loss of wages, including overtime, also with vacation pay, hospitalization benefits and any other benefits due to him until restored to 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 dismissed from the service of the Carrier for failure to protect his assignment failure to notify his foreman that he would be detained from work and for taking an unauthorized leave of absence.

The record in this case is scant, but after a review of same we find that evidence of probative value was produced at the investigation, which evidence was sufficient to support the charge.

We next turn to the issue of the penalty. Dismissal is the ultimate penalty, which is reserved for the more serious offenses. Its application in the instant case is not warranted. It is obvious that the claimant's unenviable record was a major factor in assessing the dismissal penalty. While it is proper to consider an employe's past record, the facts of the instant case do not support dismissal. Claimant should be restored to service without compensation for time lost.

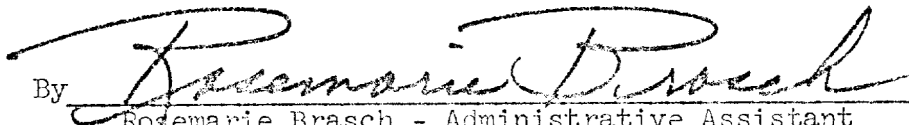
We find that the agreement was violated.

A W A R D

Claim sustained in accordance with the findings.

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 1st day of November, 1978.