

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 7748  
Docket No. 7630  
2-CR-EW-'78

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. 1, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Electrical Workers)  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Maximo Martinez was unjustly dismissed from service on date of July 23, 1976.
2. That, accordingly, the Carrier be ordered to reinstate Electrician Martinez to his former position with seniority rights unimpaired and compensation for all lost time.

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 service on July 23, 1976, following an investigative hearing on the following charges:

"Unauthorized excessive absenteeism from your position as 3:00 p.m. to 11:00 p.m. Operator at Sub Station #3 at Tuckahoe, N.Y.

Days off: June 14, 19, 20, 21, 22, 23, 26, 27, 28."

The Claimant was duly notified of the hearing, but did not appear. A representative of the Organization appeared for his defense. No evidence was provided to contradict the Carrier's charge of absenteeism.

The Carrier's disciplinary action comes hard on the heels of previous less severe penalties for the same offense -- a 30-day suspension on May 24, 1976, following a hearing on May 4, 1976; and a 60-day suspension on July 22, 1976, following a hearing on July 13, 1976. The Board finds no flaw in the Carrier's exercise of progressive discipline in the case of an employee with an unsatisfactory attendance record.

In its submission to the Board, the Organization argues that the penalty is unwarranted because the Claimant followed the provisions of Rule 22 in connection with his absences. Rule 22 reads as follows:

"Rule 22 Absent From Work

An employee unavoidably detained from work on account of illness or for other good and sufficient cause shall notify his foreman not later than the close of the first days of absence, if possible."

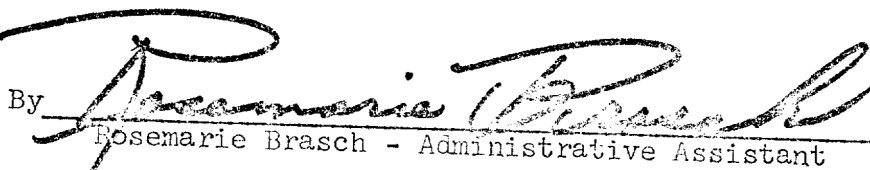
Since this argument was not made on the property, it cannot properly be made for the first time before the Board. In addition, it would be a misreading of Rule 22 to use it in defense of the employee's actions in the present case. The provisions of Rule 22, whatever other purposes they may serve, are not a defense against chronic absenteeism. As held many times before the Board, the employer has a right to expect regularity in attendance. There are no mitigating factors in this dispute to modify this general principle.

A W A R D

Claim denied.

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 29th day of November, 1978.