

The Second Division consisted of the regular members and in addition Referee Arthur T. VanWart when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers)
(Illinois Central Gulf Railroad Company)

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad violated Rule 39 of the Schedule "A" Agreement made between the Illinois Central Gulf Railroad and the International Association of Machinists, AFL-CIO, when they discharged W. L. Stevens from duty at the end of his tour of duty on September 15, 1976.
2. That accordingly the carrier be ordered to reinstate Mr. Stevens to service, seniority rights unimpaired and pay him for all wages lost as a result of his dismissal.
3. In addition, make claimant whole for all losses.
4. Compensate the claimant for all overtime losses.
5. Make claimant whole for all Holiday and vacation rights.
6. Pay premiums on Health and Welfare, Travelers Policy GA 23000.
7. Pay Illinois Central Hospital Association premiums.
8. Pay all sickness premiums under Provident Insurance Police R-5000.
9. Pay premiums on Dental Plan, Aetna Policy GD 12000.
10. Pay interest of six (6) percent on all lost wages.

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, a Machinist at Carrier's Mechanical Department's facility at Vicksburg, Mississippi, was arrested at Rayville, Louisiana, the evening of August 17, 1976, Claimant's off day. He was charged with driving while intoxicated and being without a drivers license. Claimant was incarcerated in the Richland Parish Jail until August 21, 1976. Claimant Machinist failed to report to work August 18, 19, 20 and 21, 1976. Claimant also failed to inform anyone that he would be absent or to seek permission therefor.

Claimant reported to work August 25, 1976. A formal investigation was held, September 3, 1976 to determine "whether you absented yourself without proper authority from your assignment in the Vicksburg Roundhouse August 18, 19, 20 and 21."

Carrier concluded as a result thereof that Claimant "was guilty as charged". After a review of his service record Claimant was dismissed as discipline therefor.

Rule 23, in pertinent part, provides:

"No employee shall absent himself from work for any cause without first obtaining permission from his foreman if possible, except in cases of sickness, when he shall notify his foreman as soon as possible." (Emphasis added)

Claimant suffers here from the results of his own actions. Any unexcused absence from duty is a violation of Rule 23. The Rule does recognize that situations may arise when it would not be possible to first request permission for an absence. Such would represent a mitigating circumstance. However, such circumstance must necessarily be free of an individual's fault. Here, Claimant's own actions resulted in his arrest and confinement. As pointed out in Third Division Award 6572 (Wyckoff)

"The argument is made that since Claimant was in jail and was denied the use of a telephone, no infraction of Rule 60B (which provides that an employee unable to report for duty, will immediately notify his supervisor) is shown because he did telephone as soon as conditions permitted. But the Rule is stripped of practically all meaning if personal fault is as much of an excuse for inability to report as conditions over which the employee has no control."

This Division has frequently held that incarceration does not constitute an unavoidable absence from work. See Award 1508, 4689 and 6606.

Claimant was accorded a prompt and fair hearing. He was capably represented.

The evidence adduced at the hearing was sufficient to support Carrier's conclusion as to Claimant's culpability.

The use of an employee's service record, after a conclusion of guilt has otherwise been properly established for the purpose of determining the degree of discipline to be assessed, is beyond sound and reasonable argument. It is the one, if not the only, means of determining reasonable discipline. Claimant's record on absenteeism and intoxicants are such as to impell the conclusion that the discipline assessed herein was not unreasonable. The Claim will be denied without the necessity of our reaching and passing on the various parts of claim as made. Such parts are deemed to be without any rule support.

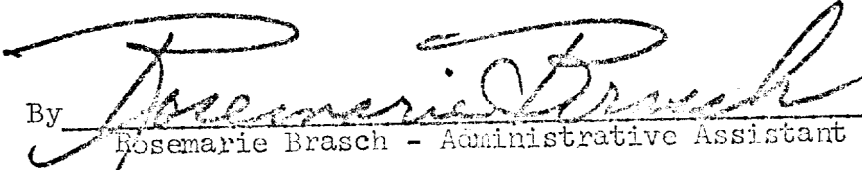
A W A R D

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 20th day of December, 1978.