

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. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement, Car Repairman Marvin A. Scroggins, was unjustly dealt with when he was dismissed and dropped from the rolls and seniority roster of the Washington Terminal Company effective June 9, 1977.
2. That accordingly the Washington Terminal Company be ordered to return Car Repairman M. A. Scroggins to the service of the Washington Terminal Company with seniority and vacation rights unimpaired and compensated for his net loss since June 9, 1977.

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 employees 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 by the Carrier for "failure to properly perform your assigned duties as Car Repairman - Car Wash Operator, between the hours of 4:45 p.m. and 9:40 p.m., Tuesday, May 3, 1977."

Claimant and his representatives were afforded an extensive investigative hearing, and the Board finds no procedural defects in the processing of the dispute.

On the specific day in question, Claimant was charged with being unresponsive to direction to assist in the car shop (part of his normal duties) and also remiss in connection with the execution of his duties as Car Wash Operator. Carrier also charges that the Claimant was unavailable to his supervisors by telephone at times when he should reasonably have been accessible.

Because of his work situation in which he operates mostly by himself in a relatively remote area, Claimant was not directly observed in failure to perform his duties; rather, conclusions were drawn by the Carrier based on reports from conductors of two of the trains involved and by the consideration that Claimant was not responsive with sufficient promptness to telephone calls. There is also some circumstantial evidence which might lead to the conclusion that Claimant deliberately took his telephone receiver from its proper position so that calls could not reach him.

The Claimant denies any acts of failure to perform his work properly, and the Organization contends that the accusations against the Claimant are based almost entirely on hearsay.

Hearsay evidence is not necessarily to be disregarded entirely, although it does, of course, have less weight than direct evidence. The Board finds, however, that Carrier had sufficient basis to determine that the Claimant was not performing his tasks with either promptness or thoroughness. There is no need for the Carrier to be required to keep its employees under constant observation in order to determine whether or not employees are performing their duties in proper fashion.

Having determined the employee's failure to work properly after its investigative hearing, the Carrier properly took note of four separate disciplinary suspensions occurring in the previous 14 months.

In view of the circumstantial nature of the evidence offered and the uncertainty as to Claimant's precise movements on the day in question, however, the Board finds that the penalty of dismissal to be excessively severe. A disciplinary suspension of 60 days is appropriate and will be determined by the Board.

This finding must not be taken to mean that the Claimant was blameless. The record shows and the Carrier properly found the Claimant guilty of unsatisfactory work performance on May 3, 1977. Coupled with previous disciplinary actions, this should make it clear to the Claimant that his future employment with the Carrier is dependent on satisfactory work performance in all aspects.

A W A R D

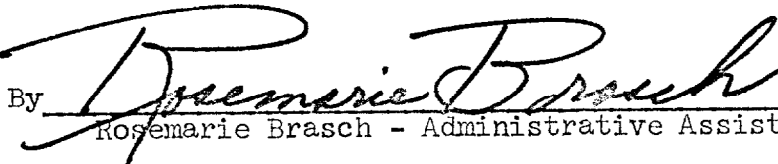
Claim sustained to the extent that the penalty for Claimant shall be changed from dismissal to a 60-day disciplinary suspension, after which Claimant shall be reinstated and compensated for net loss of wages.

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Award No. 7876
Docket No. 7781
2-WT-CM-'79

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 28th day of March, 1979.