

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { System Federation No. 18, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Maine Central Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, Laborer Richard E. Parke was unjustly dismissed from the service of the carrier following hearings held on dates of June 7, 1977 and July 7, 1977.
2. That accordingly the carrier be ordered to make the aforementioned Laborer Richard E. Parke whole by restoring him to carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for 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 employee or employees involved in this dispute are respectively carrier and employee 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.

This is a discharge dispute in which Claimant was charged as follows:

"You are charged as follows: On Thursday, June 30, 1977, you were ordered to report for work July 1, 1977, or furnish proof you were unable to work. You failed to comply with either of these instructions, and, therefore, you are in violation of Rules 703 and 707 of the Rules Governing Mechanical Department Employees."

Following a hearing, in which Claimant did not appear, he was found guilty of the charges and dismissed. Rule 703 referred to above provides that employees who are insubordinate (among other things) will be subject to

dismissal. Rule 707 holds that employees must report for duty at the designated time and place and further that employees may not absent themselves from duty without proper authority. The facts indicated that Claimant marked off on June 9, 1977 after filing an Accident/Incident Report. He had complained previously about the effects of using a particular cleaning chemical in the course of washing an engine. On June 15, 1977 Claimant received a hand-delivered letter making an appointment for him with the Company physician for June 23rd for a medical evaluation. Claimant failed to keep his appointment with the Company doctor and failed to give a reason for non-compliance.

On June 30, 1977 Claimant was again hand-delivered a letter from Carrier ordering him to report to work on July 1st or furnish proof that he was unable to work. Claimant neither reported to work as instructed nor made any contact with Carrier officials.

Petitioner argues that carrier has not sustained its burden of proof in this dispute and that its actions in dismissing Claimant were arbitrary, unjust and capricious. The Organization avers that Claimant had indeed been ill as a result of exposure to noxious chemicals at work and had properly notified his foreman of the fact and reasons for not reporting to work.

An examination of the transcript of the investigation in this matter indicates that no reason whatever was provided by Claimant for neither keeping the doctor's appointment nor reporting for work as ordered. It is noted that he did not seek a postponement or rescheduling of the hearing in this matter. The record also reveals that on the two occasions of the delivery of notices to Claimant by Carrier personnel, he was found to be engaged in lobstering on his own boat at a time when he would otherwise have been expected to be at work. Carrier's testimony indicated that he had no apparent physical limitations while engaged in the strenuous activity attendant on lobstering.

Based on the record of the investigation as well as Claimant's previous poor attendance record, Carrier was justified in both its conclusions as to his guilt as well as in the decision as to the penalty to be assessed. The Claim must be denied.

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 13th day of June, 1979.