

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 8013  
Docket No. 7714  
2-CMSTP&P-MA-'79

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 & Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Machinist James Wells, hereinafter referred to as the Claimant, was unjustly dismissed from service on October 29, 1976, and furthermore that his dismissal is arbitrary, capricious and unwarranted.
2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Carrier, be ordered to reinstate Claimant with all seniority and vacation rights unimpaired and to compensate Claimant for all lost wages, including premium payments for hospitalization, surgical and medical benefits, and group insurance for all time Claimant is held from work, commencing with October 29, 1976 and until he is properly reinstated.

### 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. Said dismissal was assessed following an investigation which was held pursuant to notice. The claimant first takes the position that the notice was not sufficient to apprise him of the precise charge against him. Secondly, the claimant argues that since he was not charged with a specific rule violation, the Carrier's case is fatally defective. Finally, he argues that the discipline is excessive.

The notice in the instant matter was sufficient. It advised claimant that he was being investigated for "alleged failure to protect your assignment in that you were absent from work between the hours of 7:00 AM and 3:00 PM on October 1, 7, and 23 of 1976". There is no question as to the adequacy of the questioned notice. Further, from such notice, the claimant knew without reference to a rule number, exactly with what offense he was being charged.

The transcript of the proceedings reflects that substantive evidence of probative value was presented which will support the Carrier's finding. We will not disturb the Carrier's finding in this regard.

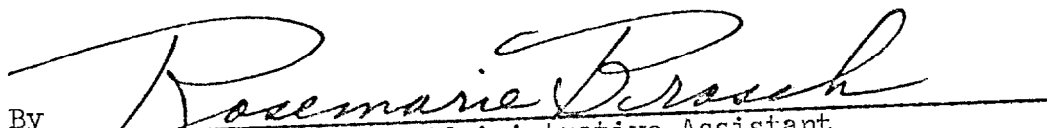
The claimant argues against the dismissal as being too harsh. Once a finding had been made that the offense complained of was, in fact, committed, the Carrier acted properly in considering the claimant's past record. Given the claimant's deplorable absenteeism and tardiness record, the dismissal was proper.

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 25th day of July, 1979.