

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Firemen & Oilers)  
                          { Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement Laborer Anthony D. Hodges was unjustly dismissed from the service of the Missouri Pacific Railroad Company on August 1, 1977.
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, Anthony D. Hodges at the pro rata rate of pay for each work day beginning August 1, 1977, until he is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.

Claim is also made for Laborer, Anthony D. Hodges, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Hodges an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 charged with violating General Notice Paragraphs 2, 4 and 5 and General Rule B of the Uniform Code of Operating Rules, when he absented himself from his assignment in the Palestine Yard, on July 22, 1977 between 4:05 A.M. and 5:00 A.M.

An investigative hearing was held on July 27, 1977 wherein he was found guilty of the aforesaid specifications and dismissed from service.

In reviewing this case the pivotal question before this Board is the assessment of penalty. We do not find, after a meticulous examination of the record, that the proceeding was improperly conducted or that the employee organization challenged the nature of the charges. In fact, we find that the organization acknowledged the seriousness of the offense. On the other hand, we are constrained to conclude that the penalty under the particular circumstances of this incident was somewhat excessive.

We recognize the fundamental observance, that an impermissible absence, especially in our industry is a serious infraction. But we are also mindful of the need to insure that the punishment fits the transgression.

Claimant, in this instance, was a short term employee. He had worked for the carrier approximately nine (9) months. Inasmuch as carrier was entitled to factor this consideration into its dismissal determination, we believe that it was unduly weighted.

To be sure, claimant's absence was inexcusable. He was under a more compelling obligation to notify his superior that he was not feeling well. Sitting quietly in his automobile was not enough to rectify the situation.

This Board has long held that it would not disturb carrier imposed disciplinary measures, where the investigative hearing comported with due process standards and the conclusion reached was judicially reasonable. But we think in this case, the disposition was excessive.


Accordingly, we will order claimant reinstated to his prior position but without back pay. His removal from service to date should serve as a sufficient warning and lesson that pertinent rules and regulations must be obeyed.

A W A R D

Claim sustained to the extent indicated in the Findings.

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 8th day of August, 1979.