

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: ( System Federation No. 91, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Upgraded Carman Apprentice A. D. Traynor was dismissed from service in violation of the current agreement on January 14, 1977, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
  - (a) Restore him to service with seniority and all employee rights unimpaired.
  - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
  - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from service.

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 following the filing of charges on December 7, 1976 for excessive absenteeism and tardiness.

On November 17, 1976, following a conference between Claimant and Supervisors that day, concerning his attendance record, Carrier wrote Claimant that his work record was "deplorable", and that if no improvement were shown, disciplinary action would be taken. The letter covered the period August 3 through November 16, 1976 and showed an absentee/tardiness total of 76½ hours out of a total of 672 working hours during that period.

The investigation held subsequent to the December 7, 1976 notice of charges disclosed that since November 17 Claimant had been late for work eight days and left work early one day, and that he reported to work 30 minutes late on December 8 and 5 minutes late on December 9 -- the days immediately following his receipt of the December 7 letter of charges.

Petitioner alleges that the December 7 letter of charges was not specific in that it did not state any specific dates of absenteeism or tardiness. Petitioner also charged that claimant was not afforded a fair and impartial investigation and that the record did not support the discharge.

Petitioner did not join the issue of a specific notice of charge on the property. The question as to whether the charge was or was not precise was not raised at the hearing.

At the hearing, Claimant was given a copy of his work record since November 17, 1976 and was asked to explain or account for each entry of tardiness or leaving work early since that date. The Hearing Officer stated for the record that "we are conducting this investigation for Mr. Traynor's (Claimant's record ... from 11-17-76 to the present".

Thus, the specific dates of his tardiness or absences were read to Claimant and an explanation solicited by the Hearing Officer. Neither Claimant nor his representative requested that the hearing be deferred so as to permit Claimant to prepare a defense against the charge. Claimant knew what he was charged with and had ample opportunity to prepare a defense thereto. Claimant and his representatives proceeded with the hearing and cross-examined Carrier witnesses. In effect, Claimant and Petitioner waived any right to raise objections to the conduct or substance of the investigation by failure to raise objections thereto at the investigation itself.

This Board has consistently held that the proper place for raising a complaint in regard to such matters as whether a Claimant was properly notified of the charges is at the hearing held to investigate such charges. Following Board precedent, we must hold that the hearing was proper.

Claimant had previously been dismissed on March 25, 1974 for unsatisfactory attendance and work record but had been reinstated on a leniency basis on November 6, 1975. About one year later, on November 17, 1976, Claimant was called into a conference with his supervisor and other Carrier officials to discuss his poor attendance record since his reinstatement and was put on notice that he was subject to disciplinary action if he did not improve.

His continued tardiness subsequent to the November 17 meeting -- which was called to discuss his poor attendance record, resulted in the letter of charges some three weeks later, on December 7.

Claimant acknowledges at the hearing that his record was not good. His attendance/tardiness record subsequent to his reinstatement, and subsequent to the November 17 meeting and letter, represented a continuation of the poor attendance pattern for which he had been dismissed in 1974.

The evidence supports the charges filed and we will deny the claim.

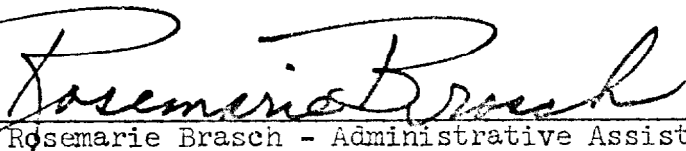
A W A R D

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 27th day of September, 1979.