

The Second Division consisted of the regular members and in addition Referee James F. Scarce when award was rendered.

Parties to Dispute: (Daniel Solak, Electrician
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(National Railroad Passenger Corporation

Dispute: Claim of Employees:

Your petitioner, Daniel Solak, was on September 6, 1977, given a notice of termination of employment from the National Railroad Passenger Corporation, Brighton Park Turbo Facility, 3727 South Sacramento Avenue, Chicago, Illinois, 60632, for inadequate reasons not commensurate with the facts, see Exhibit A attached, and wishes to be 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 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.

The Claimant herein contends that he was repairing his car on September 5, 1977, such repairs being effected at 9:15 p.m., when he was observed by his foreman and told to return to work. Later that evening, he was issued an "Employee Warning" by his supervisor. The following day, September 6, 1977, he was advised he was removed from service. The record shows the grievant, having been hired on August 1, 1977, was still in his probationary period; according to the Carrier, he had an unacceptable attitude toward his work. The record also indicates the grievant's lunch period fell between 7:00 and 8:00 p.m.; the grievant claimed he was performing such repairs during his lunch period. By date of September 7, 1977 -- the day after his removal -- the grievant signed and submitted a resignation:

"I, Daniel Solak, as of September 8th, 1977, hereby submit my resignation from National Railroad Passenger Corporation as an Electrician."

Form 1

Award No. 8138
Docket No. 7711-I
2-NRPC-I-'79

By letter of November 1, 1977, the Claimant informed the Board of his intent to raise a dispute relative to his departure from the Carrier.

This claim fails on several points, including the Claimant's failure to raise this matter on the property as required by the Act, as well as his expressed intent of disassociating himself by resignation; additionally it is the well-established right of the Carrier to act sua sponte relative to an employee's retention based on its assessment of probationary employees. Additionally, the record of the event which led to his removal -- the repair of his car at a time when he was supposed to be at work and was under pay -- raised a substantial question of the Claimant's interest in meeting the requirements of his position.

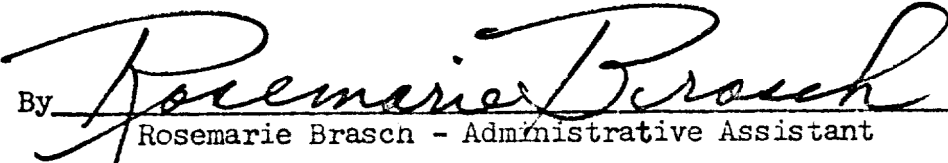
A W A R D

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 17th day of October, 1979.