

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Boilermakers)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That Boilermaker R. A. Cummings was improperly dismissed from service following investigation held on May 8, 1978.
2. That accordingly the Carrier be ordered to reinstate the aforementioned Boilermaker, to service with all seniority rights unimpaired, all lost wages, Health and Welfare, Life Insurance, Vacation and Holiday pay now in effect and any additional benefits that may be negotiated as a result thereof until he is restored to 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, a boilermaker, suffered an on-duty injury resulting in a sprained left shoulder with bicepatal tendinitis. As a result of this injury, the Claimant was under a Carrier doctor's care between the dates of March 3, 1978 up and until at least April 6, 1978 at which time the Carrier's Medical Department approved the Claimant's return to service. The Claimant was approved to return to service as of April 7, 1978 and did return to service on April 30, 1978. As a result of the Claimant's not appearing for service between the dates of April 7, 1978 and April 30, 1978 the Carrier charged the Claimant with excessive absenteeism for the days of his assignment which he did not cover between April 8, 1978 to April 23, 1978. The Carrier charged the Claimant with unauthorized absence for his alleged failure to properly mark off for twelve (12) full days of unauthorized absence. A trial was noticed and held, in absentia, and the Claimant was dismissed from service by a notice of discipline dated May 17, 1978.

It is the position of the Organization that the Carrier's charges and actions against the Claimant were without foundation and were filed for the sole purpose of dismissing the Claimant. The Organization further contends that the Claimant was improperly charged since he was absent from work as the result of a personal injury which he sustained in the course of his employment. It is the Organization's position that the Carrier dismissed the Claimant, not on the evidence presented at the trial, but due to the fact that he had suffered a service connected injury.

The Carrier takes the position that the facts and evidence, produced at a fair and impartial trial, demonstrate the guilt of the offense with which the Claimant was charged and that the discipline assessed was warranted in view of the Claimant's excessive and unauthorized absence.

The evidence of record is quite clear. Claimant was injured on the job and received Company medical treatment. It was the view of the Carrier's Medical Department that the Claimant was fit to return to service on April 7, 1978 and the Claimant was so advised. However, the Claimant did not return to duty until April 30, 1978. Although, it is argued that the Claimant's absence during the period of April 7, 1978 to April 30, 1978 was medically related, there is no evidence of record to support that allegation.

On the basis of these facts there is no question but that the Claimant was properly charged with unauthorized absence and was guilty of the charge.

The Claimant's prior absentee record was introduced at the trial for purposes of demonstrating justification for the penalty imposed. The prior absentee record of the Claimant indicates that among his three letters of caution, one was for excessive absenteeism; that among his seven disciplinary suspensions (totalling 165 days out of service) two were for excessive absenteeism where the Claimant was suspended for ten days and fifteen days respectively where he was absent from work for 24 full and 15 part days and 28 full and 15 part days for the respective suspension; and that during the course of 21 months employment the Claimant was absent from work due to days serving suspension or full or part days of absence in excess of 65% of the total working time available.

In view of the circumstances outlined above this Board finds that the Carrier's judgment in terminating the Claimant was not arbitrary and that the measure of discipline was appropriate.

A W A R D

Claim denied.

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Award No. 8191
Docket No. 8117
2-CR-BM-'79

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 28th day of November, 1979.