

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 8193  
Docket No. 8119  
2-SLSF-CM-'79

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. 22, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended Carman Robert H. Atchison, Tulsa, Oklahoma, from service as of February 8, 1978, and subsequently dismissed him from service following an investigation conducted February 14, 1979, in violation of the controlling agreement.
2. That the St. Louis-San Francisco Railway Company failed to allow proper representation at the investigation.
3. That Carman Robert H. Atchison be restored to service with all seniority rights, vacation rights and benefits that are a condition of employment. That he be compensated for all time lost plus six percent (6%) interest. That he be reimbursed for all losses sustained because of loss of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 carman, was employed by the Carrier at its Tulsa, Oklahoma facility. The Claimant was employed by the Carrier for approximately nine and one-half years as of January 1978. On February 8, 1978 the Claimant was advised that his record was being closed as of that date for excessive absenteeism. The Claimant was notified that he was being terminated since he had been absent for more than 30 days without an approved Leave of Absence.

It is the position of the Carrier that the Claimant was properly terminated from service since he had been absent from work more than 30 calendar days without obtaining a properly approved leave of absence. The Carrier cites Rule J which provides:

"Leave of Absence, properly approved, is required in every instance of any employee entitled to be working who is absent for thirty (30) days or more."

It is the Carrier's position that Claimant was absent from work without obtaining a proper medical leave of absence, between the dates of January 7, 1978 until February 8, 1978 when he received notice of termination.

The Carrier also contends, in response to the Organization's claim regarding representation by several Committeemen, that the rules of the agreement, particularly Rule 35(a), only requires or entitles the Organization to have a single representative present during the course of an investigation.

It is the position of the Organization that the Claimant was removed from service unjustly and in violation of the provisions of the collective bargaining agreement. The Organization argues that the Claimant's absence from January 11, 1978 through February 8, 1978 is only twenty eight (28) days and therefore no violation of Rule J, cited above, occurred.

There is a dispute in facts, reflected in the record, regarding the question of whether the Claimant was in fact last on duty on January 6, 1978 or January 11, 1978. There is no dispute that the claimant "punched in" on January 11, 1978 but there is some question whether or not the employee performed any service on that date. In any event, it is the Organization's position, and the record bears out such position, that the Claimant was of the opinion that the 30 days referenced in Rule J did not begin to run until January 11, 1978. This confusion is understandable, particularly in light of the evidence that the Claimant had requested permission, from appropriate Carrier authority, on January 14th to leave work prior to the commencement of his tour of duty.

This Board finds that the Carrier was justified in imposing discipline in this case. The Claimant should have been more diligent with respect to attendance to duty and to keeping the Carrier advised of his current status. However, in view of the extenuating circumstances regarding the confusion in dates it is this Board's opinion that the Claimant should be restored to service without back pay and with seniority unimpaired.

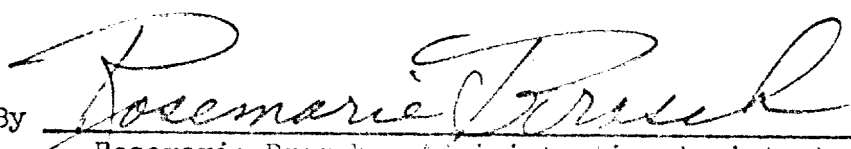
The Board also finds that the Claimant was properly represented during the grievance process. Although, the Carrier would have been more circumspect had it given other representatives of the Organization an opportunity to participate in the grievance process, that failure to do so did not prejudice the case before us.

A W A R D

Claim sustained to the extent stated in the above opinion.

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.