

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Monongahela Connecting Railroad Company

Dispute: Claim of Employees:

NO.1 That under the controlling Agreement, the Carrier improperly dismissed Carman Thomas L. Council from the service of the Carrier under letter dated October 11, 1977, after investigation held on September 29, 1977.

NO.2 That accordingly, Carrier be ordered to restore Carman Thomas L. Council to service with vacation and seniority rights unimpaired and be made whole for all losses including compensation.

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 employees 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.

The Claimant, Thomas L. Council, was employed by the Carrier in January, 1974. He was discharged by the Carrier on October 11, 1977, on the basis of excessive absenteeism.

The Claimant contends that the hearing was not fair because the notice of hearing stated that the inquiry would concern his absences of September 19 and 22, 1977, but that the company introduced his entire past record concerning absenteeism and tardiness. Further, the Claimant contends that some of his past absences were due to sickness, and therefore, should not be considered.

The Carrier contends that it was justified in terminating the Claimant based upon his excessive absenteeism. They contend that his entire work record reflects a disregard of the employee's obligation to report to work. The carrier contends that this attitude among certain employees had caused a severe problem in staffing its operations and that this had led to a program

of absentee control. The carrier argues that it has engaged in progressive discipline, and that claimant has not improved his work attendance or attitude.

The record reflects that the Claimant's absenteeism began immediately after his employment in 1974. Consequently, the company called in the Claimant and issued him a formal written warning concerning his excessive absenteeism and tardiness, in August, 1974.

The Claimant's attendance did not improve, and the Company called him again in October, 1974. At this time, a second warning was issued in the presence of Union representatives and the Claimant was advised that his attendance must improve.

When the Claimant's attendance did not improve, he was called in in December, 1974. At that time, he was issued a third written warning which was called the final warning.

However, Claimant's attendance did not improve. Thus, in May and June, 1975, the Carrier suspended Claimant for 30 days based upon his absence record. However, the attendance of the Claimant did not improve. In June and July, 1977, Carrier suspended the Claimant for 60 days based upon excessive absenteeism. From the 1st of January, 1977, the Claimant missed 59 out of 107 work days. Following Claimant's return to work in July, 1977, he missed six work days through September.

The above absence record indicates a just cause for discharge. Although it is true that some of the absences were due to illness, clearly not a substantial portion of the absences were attributable to that reason. To the contrary, Claimant offered an extremely wide, and imaginative number of excuses for his failure to report to work. Along with the more traditional excuse of car failure, Claimant once contended that he was locked in a fellow employee's apartment and could not get out in order to come to work.

Based upon the Claimant's work record, it is clear that the Carrier had just cause to conclude that he did not have a serious intention of reporting to work on the required regularity of a five-day work week. Consequently, the Carrier had just cause to discharge the Claimant for excessive absenteeism.

This Board has held in many prior decisions that the Carrier, as with any employer, is entitled to demand that the employee report to work on a regular basis. Further, it is a basic tenet of arbitral law that excessive absenteeism, is a cause for discharge. Based upon these principles, the Board cannot overturn the discharge of the Claimant.

A W A R D

Claim denied.

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Award No. 8208
Docket No. 8037
2-MC-CM-'79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of December 1979.