

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the Agreement of September 1, 1949, as subsequently amended when on June 14, 1977 Car Repairer, C. R. Humphreys was given a formal investigation for charges of excessive absenteeism and tardiness resulting in unreasonable and capricious assessment of dismissal from the service of the Norfolk and Western Railway Company.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning and intent of Rule No. 37 of the controlling agreement.
3. That because of such violation and capricious action Car Repairer, C. R. Humphreys, be made whole, restored to Carriers service, with all seniority rights, vacation rights, Holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 6% annual interest on all such lost time and all such lost wages, also reimbursement for all losses sustained account loss of coverage, under Health and Welfare, Life Insurance Agreements during the time held out of service, beginning July 12, 1977.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, C. R. Humphreys, a Car Repairer employed at Carrier's terminal facility located at Portsmouth, Ohio, was dismissed from service of the Carrier on July 12, 1977, following an investigation held on June 14, 1977, in which he was charged with and adjudged guilty of excessive absenteeism and tardiness.

Upon a thorough examination of the record, we find, among other things, that Claimant received a fair and impartial investigatory hearing. In so finding, we render as invalid and thereby dispose of the myriad number of technicalities raised by the Organization with regard to the handling of the claim on the property and the manner in which the investigation was conducted.

The evidentiary record in the instant case is strong and clear, and shows that Claimant has, since his inception into the service of the Carrier, established a pattern of absenteeism and tardiness that not only is wholly unacceptable but obviously cannot be corrected by Claimant. In the past, Claimant has been counselled and warned repeatedly about his absenteeism and tardiness, and was given a previous investigation regarding his poor record of attendance. The Board notes that these corrective actions taken by the Carrier over the last several years has gone unheeded by the Claimant.

We further find the factual evidence presented by the Carrier regarding Claimant's record of poor attendance as having been unrefuted by the Organization was unable to counter Carrier's position by a showing of any mitigating circumstances. We can arrive at no other conclusion than to view an absenteeism rate of 32.5% over a six (6) month period as indeed excessive, unreasonable, unsatisfactory, and therefore unacceptable.

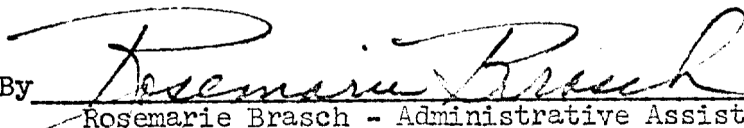
Finally, we view the Carrier's actions with regard to the discipline imposed as having been neither arbitrary, capricious, discriminatory, or excessive and therefore we will not substitute our judgment for that of the Carrier in the instant case. Based on the merits of the case and the preponderance of the evidence, we find the Claimant guilty of excessive absenteeism and tardiness.

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 16th day of January 1980.