

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 15, 1977 Car Repairer, J. D. Williams 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, J. D. Williams, 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 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, J. D. Williams, a Car Repairer, was employed at Carrier's terminal facility located at Portsmouth, Ohio. Claimant was dismissed from service of the Carrier effective July 12, 1977, following an investigation held on June 15, 1977, in which he was charged with and adjudged guilty of excessive absenteeism and tardiness.

The Organization raises a host of objections relative to procedural deficiencies and technical infractions associated with the investigation it alleges were violative

of due process principles and thereby prejudicial to Claimant's rights. Upon a thorough review and examination of the record, we conclude that none of these technicalities either separately or when taken in combination with one another prevented Claimant from receiving a fair and impartial investigatory hearing.

As to the merits of the instant case, we find the record contains overwhelming and substantial evidence supportive of Carrier's position regarding Claimant's poor record of attendance. The record reveals that in the six (6) month period, November 21, 1976 through May 25, 1977, here under consideration, Claimant was absent from work a total of forty-four (44) full work days and eight (8) part days out of a total of 128 work days. Based on these statistics, Claimant incurred an absenteeism rate of thirty-six (36%) percent. However, of the forty-four (44) full work days missed, Claimant was able to account for twenty-eight (28) days due to dental problems for which Claimant obtained two (2) medical releases from his dentist. These medical releases covered the respective periods of March 23, 1977 through April 1, 1977, and April 4, 1977 through April 15, 1977. The remainder of this twenty-eight (28) day period was devoted to a physical examination of Claimant by Carrier's physician for the purpose of ascertaining Claimant's fitness to return to work. Subtracting out these twenty-eight (28) days from the total of forty-four (44) full days missed during the six (6) month period, leaves a balance of sixteen (16) days absent from work for which Claimant is unable to provide any sufficient or acceptable excuse. On the basis of these unexcused absences, Claimant incurred an absenteeism rate of eighteen (18%) percent. Upon his return to work on May 2, 1977 and through May 25, 1977, Claimant could have worked a total of eighteen (18) days but missed seven (7) of those days, thus incurring an absenteeism rate for this period of thirty-nine (39%) percent.

This attendance record would be bad enough on its own, but the evidentiary record reflects that Claimant was subjected to two (2) previous investigations, one in June of 1975, and one in December of 1976, both as a result of excessive absenteeism and tardiness and for which Claimant received deferred suspensions of ten (10) and thirty (30) days respectively.

Testimony in the record has shown that over the years, Claimant has been counselled on numerous occasions about and progressively disciplined for his poor record of attendance. Such warnings have obviously gone unheeded by the Claimant. Previous decisions of our Board have held that the employment relationship demands that an employee fulfill the job and assignment for which he was employed and furthermore, that an employer does not have to retain in its employ any worker who is unwilling to fulfill his obligation. We find, in the instant case, Claimant's continual and persistent poor attendance wholly unacceptable and unsatisfactory. As there is nothing in the record to suggest the discipline of dismissal imposed on the Claimant by Carrier was either arbitrary, capricious, excessive, or discriminatory we cannot and will not substitute our judgment for that of the Carrier. In any event, we note that the merits of the instant case more than adequately supports Carrier's disciplinary action of dismissal.

A W A R D

Claim denied.

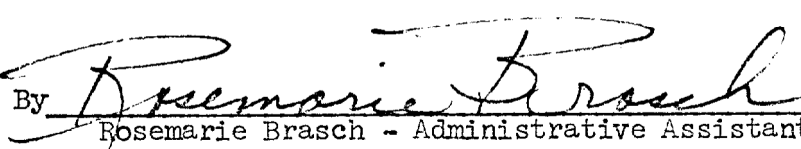
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Award No. 8228
Docket No. 8063
2-N&W-CM-'80

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.