

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

1. That under the controlling Agreement Upgraded Carman Jeffery A. Davis was unjustly dismissed from service on October 17, 1977, as a result of investigation held on September 20, 1977, at Chicago, Illinois.
2. That the Norfolk and Western Railway Company be ordered to immediately reinstate Upgraded Carman Jeffery A. Davis to service, make him whole for all wages lost, seniority and vacation rights, and all other benefits that deservedly belong to him under the existing contracts between the parties to dispute for the period of time he is unjustly dismissed.

In defense of his position, claimant argues that Carrier violated Rules 20, 32 and 33 and specifically asserts that he was legitimately ill on the days in question. He avers that his physician's note of September 8, 1977 affirms his medical condition.

Carrier, contrawise, contends that as a relatively new employee with approximately ten (10) and one half ( $\frac{1}{2}$ ) months of service, claimant repeatedly manifested poor work habits and was totally unresponsive to supervisory admonitions regarding his habitual latenesses and absences. It noted that he had previously received an investigative hearing for similar deportment.

In reviewing this case, this Board finds more than sufficient evidence to conclude that claimant unreasonably avoided taking the necessary precautions to protect his job. He was late or absent eighteen (18) times between June 30, 1977 and September 9, 1977 and failed to provide any credible medical verification until September 8, 1977, two days after his absences on September 2, 3, 5 and 6, 1977. When his aggregative attendance record is objectively assessed within the context of his short term employment and the prior investigation held in April, 1977, this Board has no viable alternative under these circumstances and our decisional law, other than to sustain his termination. It is regrettable that he should have placed himself in such a precarious and untenable position, but he was amply warned and counselled to remediate his attendance problem.

The employment relationship demands, of necessity, and particularly in this critical industry that employees must diligently perform the work for which they are hired. If an employee chooses to determine unilaterally, his employment schedule, he does so at his peril.

We do not find that Carrier violated any of the Rules cited in the instant claim, but correlatively find that he was afforded a fair and impartial investigation. In Second Division Award 7348, we held in pertinent part that "When an employee is so consistently and habitually absent over a long period of time that his employment becomes a serious liability rather than an asset, Carrier is entitled to terminate his services". We think that this holding is directly on point with the facts in this dispute and thus we will deny the claim.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of January 1980.