

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 violated the provisions of the current controlling agreement when it unjustly suspended Carman Apprentice Bryan A. Luna from service since June 30, 1978.
2. That the Carrier be ordered to reinstate Carman Apprentice Bryan A. Luna to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, and to compensate Mr. Luna for all lost time, plus six percent (6%) annual interest.
3. That the Carrier reimburse Mr. Luna for all losses sustained account of loss of coverage under health and welfare and life insurance agreement during the time unjustly 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 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, employed by the Carrier on September 27, 1976, last worked for the Carrier on May 31, 1978. His record of employment was closed by the Carrier as of June 30, 1978, after he had not been at work for 30 days without an approved leave of absence. Carrier acted under Rule J, which reads as follows:

"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."

No substantive evidence was brought forward to indicate that this time period refers to 30 working days rather than 30 calendar days.

As background, the record shows that the Claimant was directed to appear for a disciplinary investigative hearing in June 1978 in reference to his "alleged unauthorized absence from duty on May 26 and May 31, 1978". As a result of this hearing, a letter of reprimand was issued, dated June 28, 1978.

Following inquiry concerning the results of the June investigative hearing, it came to the attention of the Claimant and the Organization that the Claimant's employment record had been closed on June 30, owing to his failure to report for work for 30 days following May 31. A hearing was requested concerning this action, and such hearing was held on August 17, 1978. During the hearing, the Claimant testified as to his understanding that he thought he had been suspended during part of June owing to the previous hearing concerning absences on May 26 and May 31, but could offer no probative evidence that this was the fact. He also claimed that he reported off sick on the last three days of June, but again no convincing proof of this was furnished. As a result of the hearing, the Carrier made no finding that its action had been in error, although it offered the Claimant reinstatement on a leniency basis, which the employee declined. (The offer of leniency is not of concern to the Board, but is referred to in order to complete the sequence of events.)

The Organization argues that the Claimant was improperly "disciplined" and was not afforded a hearing prior to such "discipline", but the Board finds no basis for these charges. The Board finds, under Rule J, that the Claimant in effect terminated his own employment by his absence for 30 days without an approved leave of absence. The hearing, which was afforded the Claimant presented no mitigating circumstances.

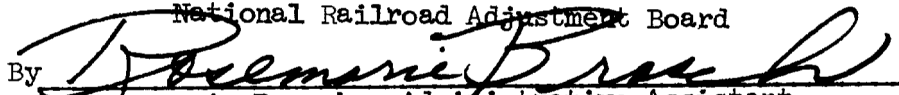
The Carrier argues that the matter is improperly before the Board because it was not heard on the property by the Director of Labor Relations, the highest officer for "time claims and grievances". It was in fact last heard on the property by the Chief Mechanical Officer - Equipment, the highest designated officer for "discipline" matters. The Organization's argument is that the Claimant's termination was disciplinary, and therefore the procedure prior to referral to the Board was properly followed. While this is a narrow dispute between the parties (and the Board has therefore reviewed the merits of the dispute, as discussed above), the technical answer would be that the Claimant's termination was self-effectuating and thus non-disciplinary and should have gone to the highest designated officer for "time claims and grievances". On this basis, the claim is dismissable.

A W A R D

Claim dismissed.

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 26th day of March, 1980.