

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

Parties to Dispute: { International Association of Machinists  
and Aerospace Workers  
{  
{ St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That Machinist L. W. Barron was unjustly dealt with by the St. Louis Southwestern Railway Company in that he was cited for three (3) consecutive investigations, his personal record assessed demerits, and he was subsequently dismissed from service by letter dated December 19, 1977, on alleged numerous charges one of which was repeated three (3) times. The controlling Agreement effective November 1, 1953 was violated.
2. That, accordingly, Claimant's personal record be cleared with return to duty, seniority rights unimpaired and made whole for all monetary losses per applicable Agreement and 6% per annum interest.

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.

The record shows that Petitioner had been given three (3) separate investigations on October 27, November 9 and December 8, 1977 respectively, for performing work on September 26, 1977 on Unit 4145 without providing proper Blue Flag Protection giving false reasons for laying off work on February 2 and 20 and March 1, 10, 30, April 6, May 9 and August 31, 1977. He was also accused of being insubordinate and dishonest when he was absent and failed to protect his position from September 26, 1977 to November 7, 1977. He was found guilty of the charges in all three investigations and given two distinct forty-five (45) demerit penalties for the specifications investigated at the October 27 and November 9, 1977 hearings and dismissal from service on December 19, 1977 following the last investigation. The above dispositions were appealed on the property pursuant to Agreement procedures and are now before us as one claim.



In reviewing the voluminous investigative transcripts and supporting documentary evidence, we find that Claimant was provided a fair and impartial hearing consistent with Agreement Rule 24 and afforded ample opportunity to conduct an intelligent and vigorous defense. We find no substance to any of the procedural objections raised by Petitioner.

Similarly, when we review the testimonial record, we find substantial evidence of compelling probative value to sustain each of the asserted offenses. He acknowledged working on Unit 4145 without protection of Blue Flag in violation of Safety Rule 4006; the Veterans Administration Hospital in Little Rock, Arkansas and the Pine Bluff Arsenal Clinic had no records of him being treated at those institutions on the days noted in the November 9, 1977 charges and additionally, he had not submitted medical verification to cover those absences. Moreover, the record clearly shows that he absented himself from work from September 26, 1977 to November 7, 1977 and gave false reasons for not protecting his assignment. In all these situations he plainly manifested behavior that was contrary to Carrier's cited rules and procedures.

We find no basis for concluding that the disciplinary penalties were an abuse of managerial discretion or violative of Rule 24. But we believe that the parties best interests would be served if we restored Petitioner, without back pay, with all rights unimpaired. His dismissal to date should serve as sufficient punishment for the proven offenses herein. We hasten to add, however, that we expect him to observe strictly all the rules and regulations governing his employment.

A W A R D

Claim sustained to the extent expressed herein.

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 April, 1980.