

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman 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 June 1, 1939, as subsequently amended, when on March 1, 1977, Car Inspector (temporary basis) R. W. Shallenberger was given a formal investigation for charges of being absent without permission from February 3, 1977 through February 14, 1977, resulting in unreasonable and capricious assessment of dismissal from all Company service.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning and intent of Rule 18 and Rule 33 of the Controlling Agreement.
3. That because of such violation and capricious action, Carrier be ordered to re-instate Car Inspector (temporary basis) R. W. Shallenberger with his seniority rights unimpaired and compensate the Claimant for all time lost beginning March 21, 1977 and continuing until such time as Claimant is re-instated.

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.

The carrier claims that Car Inspector R. W. Shallenberger was absent from work without permission from February 3, 1977, to February 14, 1977. Notification of an investigative hearing was duly sent with said hearing occurring on March 1, 1977. During the hearing, testimony by Carrier's witnesses and Claimant disclosed the following:

- 1) Claimant duly reported an impending absence on February 3, 1977 as a result of a broken windshield on Claimant's truck.

- 2) Carrier's foreman denied Claimant permission to be absent.
- 3) Claimant's absence, which began on February 3 despite the denial of permission, continued through February 14, 1977, evidently without Claimant making any further efforts subsequent to February 3, 1977 to report his whereabouts, or the reason for his continuing absence, to any appropriate supervision. During this period, Claimant was warned by Carrier through the medium of a registered letter that he was absent without permission and in danger of being terminated.
- 4) Evidently, Claimant worked as a self-employed plumber during at least some of the time of his absence from work as Carrier's employee.

Additionally, the Carrier entered into the record at the hearing the fact that while Claimant was scheduled to work forty-one (41) days between January 3, 1977 and March 1, 1977, he in fact worked only sixteen (16) days during this period. Claimant now appeals his dismissal, in part, on the grounds that the charges in his notification-of-hearing letter did not specify that his absenteeism for any other than the February 3 to 14 period was to be a subject of the hearing. First, it should be observed that the Company does not appear to rely in any material or significant way on the prior absences to sustain the legitimacy of their dismissal of Claimant and, thus, neither shall the Board. Second, Claimant did have the opportunity at the hearing to comment on these earlier absences or, alternatively, to announce that he wished a postponement for the purpose of preparing an adequate defense to charges of absenteeism on dates not specified in the original charge letter. He declined to do either. Moreover, the hearing of transcript discloses that Claimant did understand the essence of the charges against him, that he waived his right to representation as being "unnecessary", and that he did feel, at least as of the end of the hearing, that he had received fair and impartial treatment. We cannot find then, on the basis of this record, procedural defects of such a magnitude as to lead to a conclusion that Claimant did not receive a fair and impartial hearing.

Claimant's only defense at the hearing to the central charge lodged against him for the absence of February 3-14 was that, during his absence, he had been trying to earn money to replace his truck windshield to make the vehicle safe for winter highway driving. While, clearly, a motor vehicle can suffer a breakdown causing tardiness or even, on occasion, a day of work missed, there would appear to be no rational justification for Claimant's absenting himself from work as long as he did in this instance if he had been anything but largely indifferent to the protection of his job and his employer's legitimate expectations. Absenteeism of the sort displayed on this record is not justifiable and constitutes an unnecessary and undue hardship on Carrier as well as on fellow employees who must serve as replacements.

Finally, assessment by Carrier of the discharge penalty in this case does not appear to this Board to be an arbitrary, capricious, or unnecessarily harsh act.

Form 1
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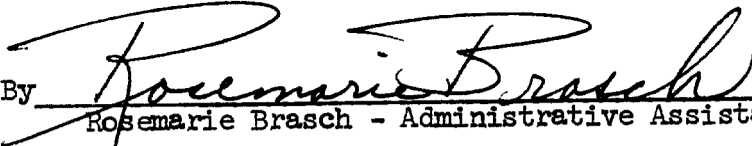
Award No. 8366
Docket No. 8000
2-N&W-CM-'80

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 11th day of June, 1980.