

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: ( System Federation No. 91, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the Current and Controlling Agreement, Service Attendant E. D. Hatch was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on July 12, 1977 after a formal investigation was held in the office of Mr. J. D. Tompkins, Personnel Manager, Car Department, on June 14, 1977.
2. That accordingly Service Attendant E. D. Hatch be restored to his assignment at South Louisville Shops with all seniority rights restored unimpaired, vacation, health and welfare, hospital and life insurance and dental insurance be paid and compensated for all lost time at the pro-rata rate of pay effective July 13, 1977 and continuing thereto until this case is adjudicated.

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 entered Carrier's employ on September 10, 1976. He was dismissed on July 12, 1977 for "repeated and excessive tardiness" since December 1976.

The record indicates repeated warnings to Claimant about his poor attendance record, without any improvement.

1. On January 5, 1977, a meeting was held with Claimant to discuss his attendance record. Various supervisory officials and the Organization's Local Chairman were present. The next day, a memorandum was sent to Claimant itemizing his absences and tardiness and cautioning him that "a great improvement must be shown".

2. Claimant's immediate supervisor talked to him about his "very poor and unsatisfactory" attendance record.

3. The General Car Foreman discussed with Claimant, his attendance record during December 1976 and January 1977 which "was causing us production problems by (Claimant's) coming in late, leaving early, resulting in loss of production and the necessity to move people out of their position where they normally work to pick up the extra work resulting from (Claimant's) not being on the job". At such discussion, Claimant did not cite illness or furnish doctor statements to explain his absences.

4. The Organization's Local Chairman talked to Claimant concerning his attendance.

At the hearing, Claimant acknowledged a "deplorable attendance record", admitting that he had been cautioned by his supervisors about his record.

The Organization contended that Claimant complied with Rule 22 and had notified Carrier supervisory personnel on most of the days he was absent. Rule 22, Absence Account Sickness, reads:

"An employe detained from work account of sickness or other good cause shall notify his foreman as early as possible."

To this defense, Carrier's response was that the specific charge upon which the dismissal was based was tardiness, not absenteeism, and that the record substantiated Claimant's "repeated and excessive tardiness", which is not excused under the provision of Rule 22.

The record is clear that Claimant, hired in September, 1976, compiled a poor attendance record for most of his period of employment with Carrier. He was warned in January, 1977 but showed no improvement. He was tardy for work on the very day of the investigation into the charges.

On the basis of the entire record, we must conclude that Carrier's action in dismissing Claimant was not arbitrary, capricious, or an abuse of managerial discretion and we must, therefore, 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 6th day of August, 1980.