

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { System Federation No. 10, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Firemen & Oilers)  
                          { Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Kent A. Jackson, laborer, Denver, Colorado, was unjustly dealt with when dismissed from service of the Denver and Rio Grande Western Railroad Company, effective November 15, 1977.
2. That, accordingly, the Denver and Rio Grande Western Railroad Company, be ordered to reinstate Mr. Kent A. Jackson to service with full seniority, payment for time lost including fringe benefits, and removal of record of same from his personal file.

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, a laborer, was employed by the carrier at its Denver shops. After an investigation held on November 15, 1977, the claimant was discharged for excessive absence from his assignment during the period from July 15, 1977 to October 30, 1977.

The organization contends the investigation was not held in a timely fashion since the investigation addressed alleged absenteeism that occurred five months prior to the hearing. Next, the claimant argues his absences were excused due to an injury. The carrier asserts that the record contains substantial evidence to justify the dismissal when coupled with a prior work record replete with excessive absences.

Rule 11 of the applicable agreement mandates that the disciplinary investigation "... shall be held as promptly as possible but within ten (10) days of the date when charged with the offense or held from service." The instant charge against claimant concerned excessive failure to attend to his

assignments. The number of absences becomes meaningful only when viewed over a period of time. Thus, the carrier cannot properly charge an employee with consistent failure to maintain his assignment without accumulating a record of absences within a period of time. Here, the carrier had accused claimant of continued absences during a three and one half month period. The hearing was promptly held at the conclusion of the period. So, the carrier fully complied with Rule 11.

After carefully reviewing the record, we conclude the claimant failed to present any evidence on the property to justify his excessive absences. There is no substantiation that the claimant was injured. During the period at issue, he ignored his duty to report to his assignment at least 20 times. At the hearing, he only offered excuses for four absences and he freely admitted to his constant truancy. Dismissal is the appropriate penalty because the claimant had recently received 60 demerits for excessive absences during the period immediately before July 15, 1977. The transcript discloses that the claimant was acutely aware that continued failure to protect his assignment would result in dismissal:

"Q. Were you also advised by the Master Mechanic in the presence of your union representative that you were allowed to accept discipline at that time and if your record did not improve in the future you would receive discipline and probable dismissal?

A. (Claimant) Yes.

Q. Is it a fact, Mr. Jackson that on July 15, you received 60 demerits due to your failure to protect your assignments and at that time you had an absentee record of 21.6%, does this reflect practically no improvement on your attendance record?

A. (Claimant) Well it's obvious that there is no improvement."

The carrier rightfully expects its employees to regularly report to work to maintain efficient operations. Here, the claimant violated the agreement and was properly dismissed.

A W A R D

Claim is 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.