

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute:

{ International Brotherhood of Firemen & Oilers
{
{ Denver and Rio Grande Western Railroad Company

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DEC 29 1980

Dispute: Claim of Employees:

P. E. LaCOSSE

1. Under the current controlling Agreement, Mr. Ronnie L. Stubblefield, laborer, Denver, Colorado, was unjustly dealt with when dismissed from service of the Denver and Rio Grande Western Railroad Company, effective January 13, 1978.
2. That, accordingly, the Denver and Rio Grande Western Railroad Company be ordered to reinstate Mr. Ronnie L. Stubblefield to service with full seniority, payment for all 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.

On December 20, 1977, Carrier gave written notice to Claimant that a formal investigation would be held on January 6, 1978,

"... to determine facts and place responsibility, if any, in connection with the alleged excessive absenteeism of Mr. Ronnie L. Stubblefield, Laborer, during the period August 1, 1977, to December 30, 1977."

At the request of the Local Chairman, the investigation was postponed to January 10, 1978, at which time it was held. The investigation revealed that in the indicated period Claimant had 36 unexcused absences and missed some work on an additional eight days.

The Organization urges that we should set aside the discipline assessed because it is alleged that Carrier did not comply with Rule 11 (a), the governing rule. Such rule requires that an investigation shall be held as promptly as

possible but within ten days of the date charged with the offense or held from service. Petitioner points out that Claimant was held accountable for days as much as 5 months prior to the investigation.

Excessive absenteeism necessarily occurs over a somewhat extended period of time. If the Organization's position were sustained, however, excessive absenteeism could never be the subject of an investigation, something obviously not intended by the parties. From the very nature of the offense each day of the unauthorized absence is a new straw on the camel's back until the breaking point is reached. With Carrier, December 29 was the final straw, whereupon the investigation was promptly scheduled and promptly held, beyond 10 days only at the instance of Claimant's representative.

Other contentions and arguments raised by the parties, while asserting deficiencies in each sides' handling of this matter, will not be commented upon, because of the disposition made in this case.

On reviewing the whole record, however, and evaluating Claimant's total record of service, we find that the ends of justice will be served if Claimant is restored to duty without back pay and given one last chance to demonstrate that he can be a valuable employee of Carrier. Claimant should be well aware that Carrier cannot countenance a resumption of his neglect of duty during the period covered by the investigation.

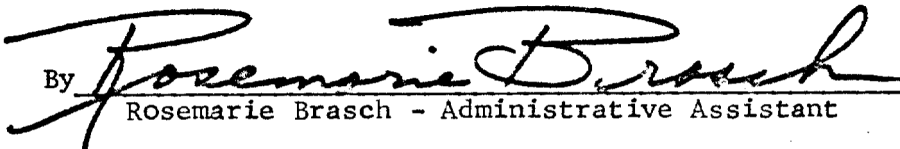
A W A R D

Claim sustained in conformity with foregoing opinion.

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 17th day of December, 1980.