

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

Parties to Dispute: { International Association of Machinists and
 { Aerospace Workers
 { Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Machinist Helper Bruce Gamble was unjustly dismissed from the service of the Carrier as a result of investigation held February 23, 1978.
2. That, accordingly, Machinist Helper Bruce Gamble, South Louisville Shops, be reinstated to the service of the Carrier and paid for all lost wages, seniority rights, vacation, insurance and all other rights unimpaired, beginning with his dismissal effective 3:30 p.m., Thursday, March 9, 1978, and continuing until the matter is settled.

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 machinist helper, was charged with excessive absence and tardiness for the period from January, 1977 through February 13, 1978. The specific dates of his alleged tardiness and improper absence are set forth in Employee's Exhibit A-13 through A-17. After an investigation held on February 23, 1978, the carrier dismissed the claimant who then pursued this appeal.

Before we can address this case on its merits, the organization objects to the introduction of evidence at the hearing regarding claimant's failure to timely report to work on February 16, 21 and 22, 1978 since those dates were not specified in the Rule 34 notice. According, to the organization, claimant cannot be tried for alleged infractions which were not included in the notice. The carrier has emphatically stated that the discipline assessed against claimant was based solely on the dates in the charge. Therefore, we will not consider any alleged infractions past February 13, 1978 in adjudicating this claim and the organization's objection is moot.

Most of the facts in this case are undisputed. Company records show claimant was tardy approximately forty times and absent approximately thirteen times during the fourteen month period preceding his dismissal. About four of the absences were excused due to illness. The remaining absences and the instances of tardiness occurred without permission. On at least three occasions, the carrier warned claimant that he must improve his attendance record. The carrier also offered to counsel claimant in an effort to eliminate his habitual tardiness. Claimant presented an array of excuses for his failure to timely report for work including: a malfunctioning time clock, car trouble, snow, inadequate parking, inability to obtain a baby sitter, personal problems, automobile license renewal, time to pay bills, forgetting his work clothes and picking up his brother at the airport. Claimant acknowledged that he was often absent or tardy but contends his excuses constitute good cause. There was a substantial dispute at the hearing concerning whether claimant's absenteeism and tardiness caused a loss of production in the carrier's wheel and axle shop.

The organization asks us to reinstate the claimant with full back pay because the record reveals insufficient evidence to support the charge. According to the employees, the claimant had good cause for his absence since the extraordinarily poor weather conditions combined with inadequate parking facilities were factors beyond his control. Also, the organization asserts that claimant's loss did not interfere with the carrier's productive capabilities and thus his conduct did not cause sufficient harm to justify a dismissal. The carrier argues that claimant was given ample opportunity to improve his attendance. The carrier's warnings however, did not result in any change in claimant's behavior. Because the claimant was tardy and absent without permission, the carrier urges us to sustain the discipline.

After carefully reviewing the record, we find claimant consistently failed to timely report for work and that the penalty of discharge is proper. The carrier informally and formally warned claimant that severe discipline would result unless claimant eliminated his absenteeism and tardiness. Instead, the record shows that claimant's instances of tardiness actually increased after the warnings which manifests claimant's "lackadaisical" attitude about his job. He acted in flagrant disregard of his obligation to timely report for his assignment. Second Division Award No. 8401 (Weiss). Claimant's indifference certainly supports a penalty of dismissal. Second Division Award No. 7870 (Roukis); Second Division Award No. 7898 (Weiss). Even if we subtract the times claimant was late due to bad weather or parking, his number of absences and tardiness exceed any reasonable number for the short period of time under consideration. Indeed, he was absent and tardy almost as much during warm weather months as during the winter. Claimant's excuses were inherently speculative and it was obvious that claimant placed more importance on such insignificant tasks as picking up his brother as opposed to his contractual obligation to report to work. His conduct leads us to conclude he has no interest in maintaining his position with the carrier.

Lastly, the organization contends that the carrier must prove the claimant's absence caused a loss of production or otherwise harmed the carrier's operation. Excessive absence and tardiness by an employee presumptively disrupt carrier operations. This is not a matter of proof but rather the loss of production naturally flows from the consistent failure of an employee to report for work.

It is difficult and perhaps impossible for the carrier to quantify the precise costs of excessive absenteeism and tardiness. The loss of production is presumed and, therefore, the carrier need not prove it as part of the charges against this claimant.

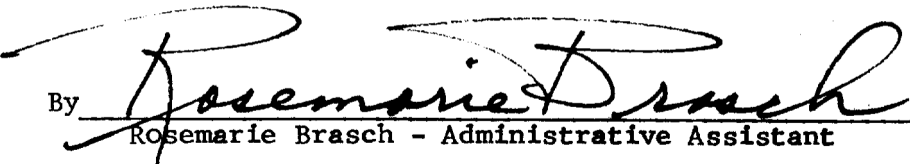
A W A R D

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 4th day of March, 1981.