

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

Parties to Dispute:     { International Brotherhood of Firemen & Oilers  
                              { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, laborer B. G. Fair, Vancouver, Washington, was unfairly suspended and dismissed from service of the Burlington Northern, Inc., effective September 8, 1978.
2. That, accordingly, the carrier be ordered to make Mr. B. G. Fair whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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 hostler helper stationed at Vancouver, Washington, was discharged for continuous absence without proper authority on July 22, 1978 to August 22, 1978. The notice of hearing, dated August 9, 1978 had charged claimant with continuous unexcused absence since July 16, 1978.

There is no doubt that claimant failed to report to work during the period from July 16, 1978 to August 22, 1978. The issue is whether his absence was excused due to illness. On July 15, 1978, Claimant completed an authorized thirty day leave of absence. Previously, on July 6, 1978, the carrier sent a certified letter to the claimant warning him that he must report to work on July 16, 1978 unless he produced a doctor's statement asserting that claimant's illness justified an extension of his leave of absence. Claimant called the carrier on July 15, 1978, but was unable to speak with the general foreman. The general foreman made several unsuccessful attempts to return claimant's call. On August 1, 1978, the carrier received a letter from claimant dated July 21, 1978 but postmarked July 31, 1978. In the letter, claimant alluded

to an earlier letter requesting an extension of his leave of absence and stated he would return to work on July 29, 1979. The letter also made reference to a medical excuse (which was not enclosed) and claimant stated he needed time to recover or replace his stolen automobile. When the medical excuse was produced (by the claimant) at the hearing, it clearly indicated that claimant had been given medical approval to return to work on July 21, 1978. The carrier denies receiving any correspondence from claimant asking for an extension of his leave time.

The organization urges us to reinstate the claimant with full back pay (and other benefits) because the claimant reasonably believed that he had procured an extension of his leave of absence and because he had a proper excuse for his absence. His excuses were illness and personal transportation problems. The carrier argues that claimant was absent without authority, at least, since July 22, 1978 when his medical excuse expired. The carrier contends it cannot tolerate the claimant's irregular work attendance.

Rule 15(c) of the applicable collective bargaining agreement governs the proper procedure for employees to follow when returning from a leave of absence. Rule 15(c) states:

"(s) Employees failing to report for duty promptly at the expiration of a leave of absence will be considered as out of service. This will not preclude employees from requesting an extension or renewal of such leave of absence, subject to the requirements of the service, but no continuous leave of absence will be permitted in excess of six months in any one year, except in cases of absence necessitated by sickness or disability." (Emphasis Added)

Carrier Rule 665 supplements Rule 15(c) by prohibiting absences without proper authority. In this case it is unclear from the record whether the claimant actually requested an extension of his leave. Assuming that he did request an extension, the record contains overwhelming evidence not only that the carrier never actually approved an extension but also that the claimant could not reasonably presume such an extension had been granted. Claimant acknowledged that he received the carrier's July 6, 1978 letter which unequivocally stated that an extension of his leave would be forthcoming only if he furnished a statement from his doctor. Claimant belatedly produced a doctor's statement which said not that claimant was ill but rather he could return to full duty on July 21, 1978. The carrier never gave claimant the impression that his leave would be extended merely because it was inconvenient for him to report to work due to the theft of his auto. Claimant failed to proffer probative evidence to justify a continuous absence and the superficial excuse of lack of transportation is simply not good cause for a thirty day absence. Second Division Award No. 7852 (Lieberman). Furthermore, during the hearing, the claimant admitted that he had no permission, actual or implied, to be off work past July 21, 1978.

Lastly, the organization asks us to modify the penalty of discharge because such punishment is unwarranted under the facts presented here. We find that the carrier's discipline is neither excessive nor arbitrary. Failure to report to

duty for a continuous period of time places an undue burden on the carrier's manpower allocations. Employees must regularly and reliably report for their assignments to insure efficient railroad operation. Thus, we cannot substitute our judgment for that of the carrier in this case and we affirm the dismissal.

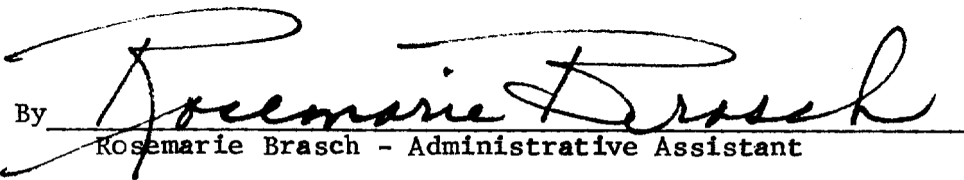
A W A R D

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.