

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  
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer T. D. Goodwin, Jr. was unjustly dismissed from service by the Illinois Central Gulf Railroad.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to return Laborer Goodwin to work immediately, with pay for all time lost plus 6% annual interest, with vacation rights, seniority rights and all other benefits that are a condition of employment unimpaired. Further that he be reimbursed for all losses sustained account loss of coverage under Health and Welfare and Life Insurance during the time held out of service.

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 in the carrier's Paducah Shops with seven months of service, was charged with an impermissible absence and failure to punch out for the second part of his shift on November 24, 1978. After an investigation held on December 11, 1978, claimant was dismissed from service.

The most significant underlying facts are not contested. At the beginning of his shift on November 24, 1978, the claimant asked his foreman if he could leave at the dinner hour. Permission was denied. Later, claimant left the premises during the dinner hour and failed to return to work at the conclusion of the dinner hour. Claimant's stepfather called the General Locomotive Foreman on the telephone and said the claimant would not be in for the remainder of his shift. Claimant testified that he had to go to another town to assist an ill brother. The claimant was vague about the nature of the brother's illness though the illness was not serious. Claimant conceded, at the investigation, that he failed to procure permission to be absent and that he did not punch out his time card before the supper break. Claimant had previously been warned about his excessive absences. During his seven months of service, claimant was absent approximately twenty percent of the time.

The organization urges us to reverse the dismissal because the shop superintendent engaged in multiple roles throughout this dispute which resulted in the prejudgment of the claimant's guilt. As to the merits of the charge, the organization argues that claimant had good cause to be absent and that he properly complied with the requirements of Rule 36. The carrier contends that there is substantial evidence to show claimant was impermissibly absent and because of his poor prior attendance record, dismissal is the appropriate penalty.

The shop superintendent (who was also the hearing officer) was involved in denying claimant's permission to lay off early on November 24, 1978 (though he did not testify at the investigation) and he assessed the discipline against claimant. This Board has carefully scrutinized hearings where a carrier officer engages in multiple functions. The officer performs multiple roles at the carrier's risk, and thus, if there is any showing of prejudice, partiality or prejudgment, the multiple roles undermine the integrity of the hearing process. We look not only at who conducts the hearing but also how the hearing was conducted. Second Division Award No. 6004 (Gilden). After reviewing the instant transcript, we cannot find any lack of procedural due process. The claimant and his organization had an opportunity to cross examine all adverse witnesses and presented a complete defense. Thus, the hearing was conducted in accord with Rule 11.

The claimant's admissions conclusively proved that he was absent without permission for the last half of his shift on November 24, 1978. The issue becomes whether or not he was absent for good cause. In this case, we rule that claimant's rather lame excuse fails to constitute good cause within Rule 36. If every employee had to desert his work obligations to journey to another town to assist a relative with a minor ailment, production would come to standstill. Furthermore, the claimant failed to proffer any evidence that his brother was genuinely ill and that the brother had no alternative means of assistance. It seems incredible that the claimant is the only person who could provide his brother with the necessary medical assistance. Therefore, there is substantial evidence proving claimant violated Rule 36.

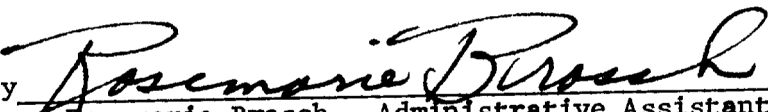
Given claimant's short length of service and his poor attendance record, this Board will not substitute its judgment for that of the carrier in measuring the amount of discipline. The discharge is upheld.

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 29th day of April, 1981.