

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

Parties to Dispute: (Brotherhood of Railway Carmen of the United States
(and Canada
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company did improperly dismiss Coach Cleaner P. A. Williams, Miami, Florida, from the service of the Seaboard Coast Line Railroad Company on August 16, 1979, as a result of an investigation held on July 27, 1979.
2. That this unjust dismissal by the Company violated Coach Cleaner P. A. Williams rights under Rules 19, 30 and 32 of our current working agreement when the Seaboard Coast Line Railroad Company failed to prove Mr. Williams guilty as charged.
3. That it is our position that Mr. Williams was not guilty of the charges against him, but if he were, which we in no way concede, the discipline administered was much too harsh to the point of being unreasonable, arbitrary and capricious.
4. That accordingly the Seaboard Coast Line Railroad Company be ordered to restore Coach Cleaner P. A. Williams to service with seniority and all other rights unimpaired and paid for all time lost - eight (8) hours a day, forty (40) hours each week at straight time rate; all overtime he would have made if he had been allowed to remain in service; health and welfare benefits; vacation rights, dental plan and all other benefits that would accrue to his position.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

A careful review of the records reveals that, Claimant entered service for the Carrier as a Coach Cleaner on February 11, 1977, at Hialeah, Florida. On April 18, 1979, Claimant called his supervisor and advised that he had been in an automobile accident and did not know if he would report for work that day. Claimant did not

thereafter report for work or advise Carrier the reason for his absence. The Carrier, in a letter dated June 7, 1979, advised Claimant to report to the office of the Assistant Master Mechanic within 10 days and bring medical evidence to substantiate his absence commencing April 18, 1979. Claimant failed to comply with the instructions. In letter dated July 5, 1979, Claimant was instructed to attend formal investigation to be held July 24, 1979. The investigation was postponed and held on July 27, 1979.

By letter dated August 16, 1979, the Carrier advised the Claimant that he was dismissed from service of the Carrier.

The initial claim filed and progressed by the Organization on the property read:

"Reference to your letter dated 8-16-79, CIF file 10 8 33
ID 170465, dismissal of Coach Cleaner P. A. Williams.
This will serve as notice appealing your decision."

It is quite evident that the claim presented to the Board is extremely different from the appeal of the discipline handled on the property. The Board prefers to dispose of disputes such as that herein on their merits rather than on procedural grounds. However, we are left with no alternative other than to conclude that the claim under consideration is at fatal variance with the claim progressed on the property. Consequently, we are left no alternative other than to conclude that the claim is procedurally defective as it violates Section 3, First (i) of the Railway Labor Act, compelling a dismissal without reaching the merits thereof.

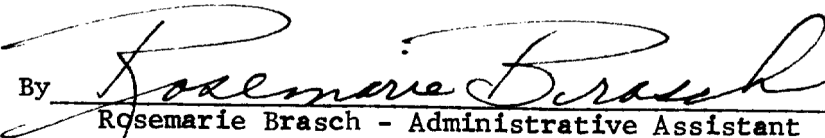
A W A R D

Claim dismissed.

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 6th day of January, 1982.