

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8871
Docket No. 8513
2-BN-MA-'82

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute:

{ International Association of Machinists and
Aerospace Workers
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement and the Burlington Northern Schedule Rules, the Carrier unjustly dismissed Machinist Helper Apprentice J. Williams, effective June 14, 1978.
2. That Carrier reinstate to service and compensate J. Williams for payment of all wages lost while dismissed from service from June 14, 1978, to present and for other benefits including credit for time lost during this period for vacation and other rights.

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 review of the record indicates that claimant approached his foreman on May 17, 1978 and asked to leave work early. He gave no reason for wanting to leave early. His foreman told him that he would have to get permission from a general foreman to leave early. Claimant did not obtain authority from the General Foreman on duty, but instead simply left work without authority at 11:00 AM. He did so even though the General Foreman was available on May 17, 1978 to entertain his request.

Claimant relied upon a "To Whom It May Concern" letter allegedly from a Doctor Kartel. Claimant contends that he had to leave work on May 17, 1978 to keep an appointment with this doctor. Even if claimant did have an appointment with Dr. Kartel, that did not relieve him of his responsibility to obtain authority to absent himself from work to keep that appointment. Rule 16(e) provides:

"(e) An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

If Claimant had good cause to be excused from work, it was incumbent upon him to convey this to his foreman in order to obtain authority to be off. Claimant did not convey his reason for leaving work to his foreman.

Further, if he had good cause to be off, he was obliged to notify his foreman as early as possible. If claimant had a doctor's appointment on May 17, 1978, reasonably he should have informed his foreman of that fact prior to that date.

It is clear that the Carrier had reason to assess discipline.

Dismissal, of course, is the strongest sanction which the Carrier can apply to any employee. The severity of the discipline in this case makes it clear that the Carrier reached beyond the charges brought against Claimant as grounds for its action. While it is true that an employee's employment record may be taken into account by the Carrier in determining the degree of discipline to be administered, the principle is not meant to grant the Carrier license to dismiss for a rule infraction not warranting dismissal in its own right. The point is well stated in Award No. 7708, in which the Second Division (Referee Franden) stated in regard to a charge of failure to protect assignment.

"Dismissal is the ultimate penalty which is reserved for the more serious offenses. Its application in the instant case is not warranted. It is obvious that the claimant's unenviable record was a major factor in assessing the dismissal penalty. While it is proper to consider an employee's past record, the facts of the instant case do not support dismissal."

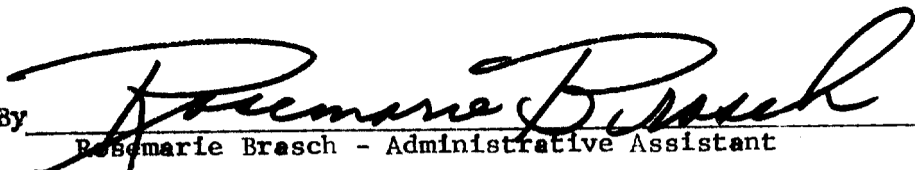
Progressive discipline is salutary and proper. The Claimant is put on notice he now has two strikes on him. One more and he is out. Based on the record we will reinstate the grievant but without any back pay.

A W A R D

Claim sustained in accordance with Findings.

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 27th day of January, 1982.