

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company violated the current Agreement when they unjustly dismissed Electrician Charles A. Evans from service on April 26, 1979.
2. That accordingly, the Chesapeake and Ohio Railway Company be ordered to restore Electrician Charles A. Evans to service with seniority unimpaired and compensate him for all time lost and benefits subsequent to and including April 26, 1979, and restore all other benefits and rights he would have had if he had remained in 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.

The Claimant was dismissed on April 26, 1979, for insubordination, falsely claiming an illness, and absenting himself from his assignment without permission on March 15, 1979. The Organization asserts the dismissal was unjust.

Claimant reported to work on March 15, 1979, at 11:00 P.M. Shortly thereafter, he was advised by his Supervisor that his job assignment was being blanked, and it was necessary for him to perform other duties. After a brief discussion with his Supervisor, the Claimant marked his daily service card, "sick", and left the property. The Claimant's testimony is that he told the Supervisor he was sick and unable to perform a strenuous job. The Supervisor understood the Claimant to say he did not feel like working any job other than his own. Claimant admitted he did not ask permission to be excused from work because of sickness.

On March 17, 1979, Claimant was treated by David H. Procter, M.D., in his office. Thereafter, he was admitted to the hospital. The diagnosis was stress gastritis and hiatal hernia. The record establishes that, while Claimant did not properly communicate with his Supervisor, he did say he was sick at the time he marked his time card. Furthermore, a witness to Claimant's conversation

with Supervisor Callihan presumed Claimant was sick although he said Claimant "... didn't put it exactly that way in the words between". This witness also corroborated the contention Claimant did not refuse to work. Rather, he said he was "unable". Claimant was responsible for effectively communicating with Supervisor Callihan. At the investigation, Claimant admittedly was unsure as to whether, in that conversation with Supervisor Callihan, he had expressed himself clearly.

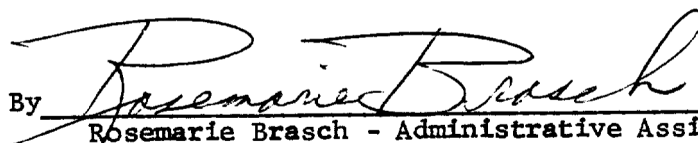
The introduction of evidence the Claimant worked for at least one-half day in outside employment the morning after he left work without permission is not controlling when viewed in conjunction with the entire record. There is no substantive evidence to support a charge of falsely claiming illness. On the contrary, we conclude the record in conjunction with Claimant's hospitalization, reasonably establishes Claimant was ill on March 15, 1979. However, this same record clearly shows Claimant did not properly advise his Supervisor he was too sick to perform the assigned work. Thereafter, he did not secure permission to leave the property. Under such circumstances, the Carrier properly determined that such conduct necessitated discipline. This Board does not agree with the Carrier that the evidence substantively proves its charges of insubordination and false claim of sickness. We, therefore, conclude the penalty of dismissal to be excessive discipline under these circumstances. The Claimant is to be reinstated with all seniority credits he held on April 26, 1979, but without back pay. The Claimant is on notice that he must comply with assignments. Secondly, should he have reason to leave the property, he will request and secure permission.

A W A R D

Claim sustained in part, as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1982.