

The Second Division consisted of the regular members and in addition Referee Thomas V. Bender when award was rendered.

Parties to Dispute:     { International Brotherhood of Electrical Workers  
                              { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the action of the Consolidated Rail Corporation (Conrail) in the dismissal of Electrician B. W. Hunter on April 3, 1980 was unjust and not in accordance with the current Agreement.
2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician B. W. Hunter to his former position with seniority unimpaired and compensation for all wage loss and be made whole for all other rights and benefits lost in accord with Rule 7(e).

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.

The Claimant has been employed as an Electrician by ConRail for 3½ years. The Claimant was terminated for excessive absenteeism following a formal investigation held on March 26, 1980. The absenteeism cited in the notice of investigation was:

"Excessive and unauthorized absenteeism at Harrisburg Locomotive Terminal on February 24, 1980, February 25, 1980, February 26, 1980, February 27, 1980, February 28, 1980, March 10, 1980 and March 11, 1980."

The investigation record shows that the Claimant did report to the Carrier that he was ill for the period February 24-28, 1980. The March period went unexplained, there was some mention of a burned out ignition.

There is no question that the record supports with substantial evidence the fact that the Claimant was not at work on the dates listed herein. The fact that the Claimant called in to advise the Carrier of his absence does not resolve the problem. Valid excuse or no, the Carrier needs a certain number of people to operate. And, if an employee proves, over a reasonable period of time that he/she is not reliable, the Carrier may terminate that employee. The Referee in Second Division Award No. 7348 (McBrearty) sums up our view:

"When an employee is so consistently and habitually absent over a long period of time that his employment becomes a serious liability rather than an asset, Carrier is entitled to terminate his services."

The Claimant's record since his employment was attached to the investigation transcript. The record cannot and should not be used to sustain the charge immediately under review. It does show the depth of the Claimant's knowledge, and how seriously he has taken his duties as an employee. The Claimant has been disciplined four separate occasions in the prior 3½ years. And he was disciplined for an unrelated matter for which he received a 30 day record suspension.

In Third Division Award No. 19537 (Lieberman), the Referee discussed the function of discipline:

"Discipline generally has three goals: punishment of an employee, correction and training of the employee, and as an example for training purposes for other employees. We have held in many cases (e.g. Award 16065) that discipline should not be primarily punitive."

Given this Claimant's record, further suspension/corrective discipline would do no good and further, since the underlying charge was proven we cannot substitute our judgement for that of the Carrier. In light of the Claimant's record, termination is not an unreasonable arbitrary or capricious exercise of managerial function.

A W A R D

Claim denied.

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 30th day of June, 1982.