

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 9162
Docket No. 9219
2-CMStP&P-EW-'82

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
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when Electrician Helper John Coleman was unjustly dismissed from service on January 2, 1979 for alleged failure to protect his assignment.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician Helper John Coleman whole by reinstating him to service with all seniority and other rights unimpaired and repaying all lost wages and benefits and his record cleared.

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 in this matter was employed as a crane operator on September 6 or 7, 1978; he was subsequently terminated on January 2, 1979 for excessive absenteeism. During the Claimant's four (4) month career his attendance record was singularly abysmal. The Claimant's record shows:

<u>Date Absent</u>	<u>Reason For Being Absent</u>
October 16, 1979	No call - No reason given
November 16, 1979	No reason given
November 17, 1979	No reason given
November 20, 1979	No reason given
November 21, 1979	No reason given
November 22, 1979	No reason given
November 24, 1979	No reason given
November 27, 1979	No reason given
November 28, 1979	No reason given
November 29, 1979	No reason given
November 30, 1979	No reason given

<u>Date Absent</u>	<u>Reason For Being Absent</u>
December 1, 1979	No reason given
December 4, 1979	No call - No reason given
December 7, 1979	No reason given
December 8, 1979	No reason given

The investigation into this matter was held on December 12, 1978.

Given the Claimant's record, this should be an easy case. As we have noted before, we have no particular patience or sympathy for an employee who fails to protect his job, and this employee's record is awful. However, the problem in this case centers around the fact that the Carrier gave the employee notice of the investigation just prior to the commencement of the hearing.

The Claimant's statement at the investigation is about as disjointed and incoherent as anything we have seen in some time. Further, the Claimant's representative made no statement whatsoever. No objection to the notice of investigation and no request for a continuance was made. Now the problem might be dismissal on the basis that if the representative did not make any objection or request for continuance the matters can be deemed to have been waived. Indeed, this is the exact position taken by the Carrier's Asst. Vice President Labor Relations during the appeal. The Carrier also states that the following exchange supports the fairness of the hearing as well as the clarity of the charge:

"Q. (Mr. Coleman was asked) You are charged with excessive absenteeism and failure to call in. Do you agree with this?

A. Yes (Carrier's Exhibit B)."

Yes what? Yes that is the charge or yes, I was absent and did not call in? This exchange does not get us over the hurdle of Rule 23 which provides:

"Whenever it is practicable to do so, five (5) days' notice will be given men affected before reduction in force is made and lists showing employees to be laid off, will be furnished local committees. The ratio of apprentices to be maintained."

During the entire investigation the Carrier did not explain or indeed even attempt to explain why it could not give the Claimant a simple five (5) day notice. This topic was not even obliquely addressed.

The function of an investigation is to gather facts so that a reasoned decision can be made. This was absolutely impossible in this case. The Carrier officer in charge of the investigation was in such a hurry that he asked his own witness, Foreman Johnson whether the investigation was conducted in a fair and impartial manner. Foreman Johnson did answer in the affirmative.

Based on the foregoing, we can conclude:

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1. The Claimant has a terrible attendance record that may or may not have been explained.
2. The Carrier violated Rule 16, quoted supra or at least maybe it did. No explanation was given for the no notice investigation. If the Carrier had a reason for its conduct, it elected not to share it with anyone.

The Claimant shall be returned to work. However, his attendance record is so bad no back pay is awarded. Any other disposition would not do justice to the long and respected tradition of Labor Relations in the Railroad Industry.

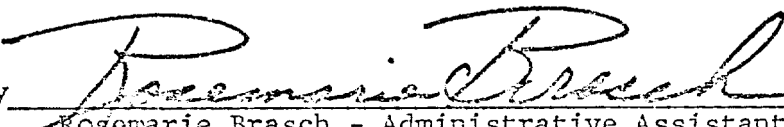
A W A R D

Claim sustained in accordance with the 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 30th day of June, 1982.