

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mathew Bradberry when they removed him from service on July 20, 1979.
- (2) That, therefore, Mr. Bradberry be returned to service with all rights, privileges and benefits restored.
- (3) That he be made whole for all health and welfare benefits, pension benefits, unemployment and sickness benefits and any other benefits he would have earned had he not been removed from service.
- (4) Further, that he be compensated for all lost time, including overtime and holiday pay and that such lost time be counted as vacation qualifying time.

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.

This is a case where the Brown System of Discipline, which has been in effect on the Santa Fe for more than 50 years, finally took its toll on an employee who has worked for the Santa Fe for more than 23 years. The claimant is Mathew Bradberry, a laborer employed by Carrier at Topeka. Mr. Bradberry's record of discipline is as follows:

<u>Date</u>	<u>Demerits Assessed</u>	<u>Total Demerits Outstanding</u>	<u>Cause</u>
2-10-67	30	30	Sleeping while on duty.
7-05-67	10	30	Absent without authority.
12-08-67	20	40	Malingering.

<u>Date</u>	<u>Demerits Assessed</u>	<u>Total Demerits Outstanding</u>	<u>Cause</u>
8-14-68	20	50	Absent without authority and malingering.
10-30-69	20	40	Absent without authority.
2-27-70	20	60	Sleeping while on duty.
3-09-70	Removed from service.		Excessive demerits.
5-01-70	Returned to service.		Leniency reinstatement.
3-26-73	20	20	Absent without authority in violation of Rule 16, "General Rules for the Guidance of Employees".
10-23-73	30	40	Absent without authority in violation of Rule 16, "General Rules for the Guidance of Employees".
11-12-73	15	55	Responsibility for garnishment on wages in violation of Rule 20, "General Rules for the Guidance of Employees".
3-14-74, et. al.	10	55	Absent without authority and not devoting himself to his duties in violation of Rules 16 and 18, "General Rules for the Guidance of Employees".
8-08-74	10	55	Responsibility for garnishment on wages in violation of Rule 20, "General Rules for the Guidance of Employees".
4-21-75	20	55	Absent without authority in violation of Rule 16, "General Rules for the Guidance of Employees".
1-5,6-77	20	25	Absent without authority in violation of Rule 15, "General Rules for the Guidance of Employees".
9-6-77	20	35	Absent without authority in violation of Rule 15, "General Rules for the Guidance of Employees".
10-31-77) 11-01-77)	10	45	Absent without authority in violation of Rule, "General Rules for the Guidance of Employees".
3-16-78	20	55	Absent without authority in violation of Rule, "General Rules for the Guidance of Employees".

<u>Date</u>	<u>Demerits Assessed</u>	<u>Total Demerits Outstanding</u>	<u>Cause</u>
7-25-78	90-day suspension.	45	Absent without authority in violation of Rules 13 and 15, "General Rules for the Guidance of Employees".
7-06-79	30	65	Absent without authority in violation of Rule 15, "General Rules for the Guidance of Employees".

On July 17, 1979, investigation was held to determine facts and place responsibility, if any, concerning Claimant's alleged violation of Rule 15 of the "General Rules for the Guidance of Employees" Form 2626 Standard, 1978 revision for failing to report for duty at the prescribed time and for not having the proper authority to be absent on July 6, 1979. As a result of this investigation Claimant was found to have violated Rule 15 and his personal record was assessed with thirty demerits. This made his personal record stand with sixty-five demerits marked against it.

On July 20, 1979 investigation was called concerning alleged violation of Rule 31-H of the "General Rules for the Guidance of Employees", Form 2626 Standard, 1978 revised by his accumulation of sixty or more demerits. As a result of this investigation Claimant was removed from service immediately.

This appeal is based 1st upon the Organization's contention that Carrier was not justified in assessing the 30 demerits which caused Claimant's total to exceed 60 and 2nd upon the Organization's challenge of the Brown System.

In the July 17 investigation the following testimony was heard from Claimant:

"Q. For the record, I will at this time Read Rule 15 of the General Rules:

'Employees must report for duty at the prescribed time and place and devote themselves exclusively to their duties during their tour of duty. Those subject to call for duty will be at their usual calling place, or provide information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places without proper authority.'

Mr. Bradberry, what is the prescribed time for you to report for duty?

A. 7:30.

Q. On July 6, did you report at the prescribed time?

A. No I didn't.

- Q. Did you have permission from your supervisor to be off that morning?
- A. Right. (Sic)
- Q. What time did you leave--when did you start to work?
- A. I came out around 7:15 and I checked and I had a flat tire so I felt I better go call and when I got to the telephone it was 7:33 so I know John would already be gone so I just came on into work.
- Q. Mr. Bradberry, am I to understand that you went out of the house at 7:15, saw that you had a flat tire and it took you eighteen minutes to get back in the house?
- A. What I did was I jacked up my car and then I thought I have to call in and it was 7:33 when I got in the house and I said John has left the office by now so I couldn't get a hold of him and I just came on to work.
- Q. Mr. Bradberry, have you ever been talked to by any supervisor on the Santa Fe regarding your attendance?
- A. Yes, sir.
- Q. Have you ever been cautioned that you needed to start to work a little earlier so you would not be late to work?
- A. Yes sir.
- Q. Do you recall when was the last time you were talked to regarding your absenteeism?
- A. Yes sir. I wouldn't know the exact date but something like three days before this happened.
- Q. Do you recall what you were told at that meeting?
- A. I couldn't be late--I believe that's what you told me."

Mr. Bradberry reported for duty at 8:19 A.M.

While it is sad to contemplate a 52-year-old man with 23 years of service being discharged because he was late for work after having a flat tire, the whole story offers little in favor of Mr. Bradberry. In truth, it certainly appears that Mr. Bradberry was a liability for Carrier for many years. We cannot fault the assessment of 30 demerits (which triggered the discharge), particularly in view of the fact that while Claimant had been warned only three days earlier he not only failed to get up early enough to make sure he could get to work on time, he also failed to promptly call and advise he would be late.

Nor can we fault Carrier's use of the Brown System. Irrespective of points accrued, the discharge of Mr. Bradberry was warranted by his poor record and the seriousness of this last offense. Progressive discipline, interspersed with leniency, was given. Mr. Bradberry was accorded due process in every respect.

Form 1
Page 5

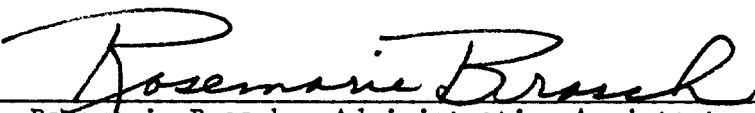
Award No. 9183
Docket No. 8809
2-AT&SF-FO-'82

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 22nd day of July, 1982.