

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did unjustly suspend Coach Cleaner Ann Williams for 30 days beginning April 4, 1979 and ending May 15, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Coach Cleaner Ann Williams for all lost time from April 4, 1979 to May 15, 1979.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Coach Cleaner Ann Williams for all losses sustained account loss of coverage under health, welfare and life insurance benefits.

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 employed as a coach cleaner at the Western Avenue Coach Yard of the Carrier in Chicago, Illinois. After a hearing on March 21, 1979 she was suspended for thirty (30) days for excessive absenteeism and lateness on six (6) days and for failure to notify the foreman within a reasonable length of time of being unable to protest her assignments on three (3) of those dates.

The Employes, on behalf of the claimant assert that the hearing was improper, not fair, and impartial as required by virtue of the employe being unable to attend due to illness. Therefore she was unable to testify in her own behalf.

Further, they argue the carrier did not postpone the hearing when requested, despite the knowledge of the claimant's legitimate reasons for her absence from the hearing.

Also it is alleged that the carrier did not sustain the burden of proof.

The Board finds, however, that none of these positions are sustainable from the record.

While it is true that the claimant was not present at the hearing, she had been adequately notified of the postponed date. The Employee had requested a postponement from the initial one scheduled and it had been granted. The carrier offered an uncontested affidavit affirming that the claimant had admitted to receiving a letter to that effect and had stated that her reason for not appearing at her hearing on March 21 was because her doctor's statement indicated that she need not return to work until March 26.

The Board is not persuaded that her medical condition precluded both her attendance at the hearing and notification to the carrier that she would be unable to attend. On the contrary, her attendance and absentee record would indicate that her failure to notify the carrier of her impending absence was to be expected. As in the past she did not fulfill her obligation in this regard but, in that same affidavit, she is reported to have "felt that it was not necessary to contact my office requesting a postponement." Instead she simply presented herself on March 26 without contacting either the carrier or her union representative.

With respect to the Employee's request for postponement, the carrier had postponed the initial hearing at the request and for the convenience of the Employee. On the day of the hearing the Local Chairman contacted the carrier indicating that he would be unable to attend and designated a committeeman as an alternate.

The committeeman was present and requested a postponement simply because the local chairman was not present. The following exchange took place at 9:22 AM after waiting for the claimant to appear. Mr. Fuller, the conducting officer asks John Koss, committeeman representing Brotherhood Railway Carmen of the United States and Canada:

"Q. Mr. John Koss are you here to represent Ms. Ann Williams?

A. Well, the only way I can give you answer to is that I am not here to represent her. Mr. T. Machione should have been here. I am only here to relieve Tom Machione until he gets here.

Q. Mr. John Koss, do you wish to postpone this hearing for a reasonable length of time, and if so what reason could you give me at this time?

A. I would like to postpone this meeting for a reasonable time until Tom Machione can handle the case."

From this exchange it appears that the representative is reluctant to act in behalf of the local chairman in his absence. But his hesitancy or lack of confidence

is not a legitimate reason to postpone the hearing. Conceivably the hearing could be postponed indefinitely by successive statements of reluctance on his part.

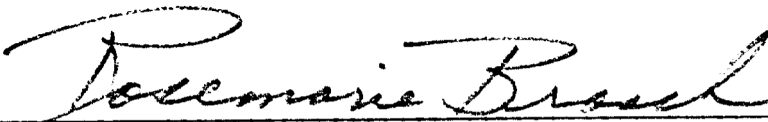
In so far as the question of the carrier sustaining the burden of proof, the Board must hold that there is more than sufficient evidence to sustain the carrier's action. For example, one six (6) month period in 1978 showed 85 days absent, i.e. about 80% of the time the claimant did not work. The carrier forbearance in this regard, in simply warning the claimant, is remarkable. The carrier's action in this case of penalizing the worker with thirty days suspension is warranted without any doubt.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
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.