

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 9384  
Docket No. 9428  
2-SPT-MA-'83

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

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{ Southern Pacific Transportation Company (T&L Lines)

Dispute: Claim of Employees:

Claim in favor of Machinist Benito Zavala for reinstatement, compensation for all time lost and all rights unimpaired due to Carrier's unjust dismissal of Machinist Zavala, by investigation held June 20, 1980.

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 is a machinist who has seniority with the Carrier since September 23, 1974. On June 3, 1980, he was charged with failing to protect his work assignment on twenty occasions from January through May. He was also charged with reporting late ten times and leaving his assignment early on four instances during the same period.

The Organization claims the dismissal was unjust, and the Carrier failed to meet its burden of proving Claimant was guilty as charged. The Organization contends that a careful review of the record on the property demonstrates that at no time was Claimant's past record taken into consideration, yet Carrier has attempted to justify the dismissal by including Claimant's past record in its submission to the Board.

Except for the absence of February 7, 1980, the absences, tardiness, and early departures are undisputed. Claimant admitted to having an attendance problem. The hearing record in this case substantiates all elements of the charges. The scope of this Board's review in a discipline case is well defined. We agree with the Organization that Carrier's attempt to introduce Claimant's past record for the first time in its submission to the Board is improper. As an appellate authority, however, it is not our function to substitute our judgment for that of the Carrier. We acknowledge the fact the dismissal was based on the charges as stated, however, this Board can only decide from the

record whether or not there is substantial evidence to support the charge. Having found the record contains such evidence, the assessment of discipline rests in the Carrier's discretion, and we are not empowered to alter that penalty unless it is clearly shown Carrier's actions were unjust, unreasonable or arbitrary. Lacking such a conclusion in this case, we must uphold the Carrier's discipline.

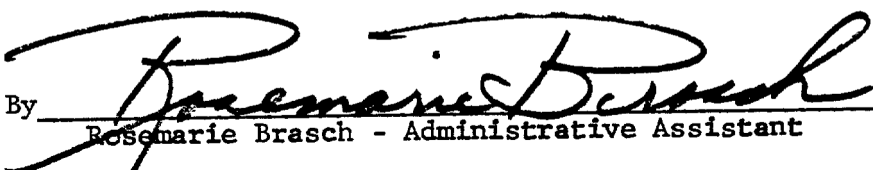
A W A R D

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 2nd day of February, 1983.