

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Laborer K. Browning was unjustly dismissed from service of the Carrier following trial held on October 24, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned K. Browning whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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.

Pursuant to an investigation which was conducted on October 24, 1979, Claimant, a Laborer at Carrier's Gibson Enginehouse, Gibson, Indiana, seniority date of February 25, 1960, was dismissed from Carrier's service having been found guilty of:

"Excessive absenteeism in that you have been absent the following dates:

July 6 and 30, 1979
August 6 and 13, 1979
September 11, 12 and 14, 1979
October 8 and 9, 1979."

Organization's contentions in this matter are that Claimant's dismissal was "arbitrary, capricious and unjust action and an abuse of managerial discretion" on the part of Carrier; and also that Claimant's October 24, 1979 investigation hearing was not conducted in a fair and impartial manner. In support of this position, Organization asserts that Claimant's absences were not continual or constant, but were intermittent and, therefore, cannot be termed "excessive"; Claimant did notify Carrier of his absences on all dates charged as is required under Rule 13; that Claimant's twenty (20) years of service to Carrier should serve to mitigate Claimant's termination; and lastly, Carrier's reliance upon Claimant's past record in this matter was improper because it was not related to the specific charges which had been cited.

Carrier's position, simply stated, is that "... Claimant was afforded a fair and impartial trial and (that) upon consideration of the evidence and his poor prior record, no change in Carrier's assessment of discipline is warranted." According to Carrier, regardless of the reasons for his absences, Claimant's absenteeism was chronic and, in such situations, because of the detrimental effect upon Carrier's ability to properly perform its operations, dismissal is an appropriate penalty to impose (Second Division Awards 6240, 6710, 8380 and 8381). Carrier also argues that Claimant has been warned and disciplined previously for excessive absenteeism, and that Claimant's attendance has not improved as a result of those corrective actions.

Upon a complete and careful consideration of the entire record in this matter, the Board cannot ascertain one good reason to rescind or modify Carrier's actions which have been imposed herein. The specific charges which have been raised against Claimant were proven with conclusive evidence. Indeed, Claimant himself has admitted to those charges. Additionally, Claimant's attendance record is "atrocious", and is of the type which no employer should be required to endure. Claimant's obvious cavalier attitude regarding his responsibility as an employe for regular attendance at work convinces the Board that Claimant's attendance will not improve -- even if this Board were to give him the opportunity to do so. Moreover, despite Claimant's long length of service to Carrier, given Claimant's extensive disciplinary record involving similar incidents during the last five (5) years of this period of time, any consideration of mitigation of penalty which might be entertained is now clearly beyond the proper scope of the Board's authority. Claimant has already had numerous opportunities to demonstrate that he could be a valued employe to Carrier. Claimant wrote his own book regarding his employment with Carrier; and the instant case was Claimant's "last chapter" in that book.

A W A R D

Claim denied.

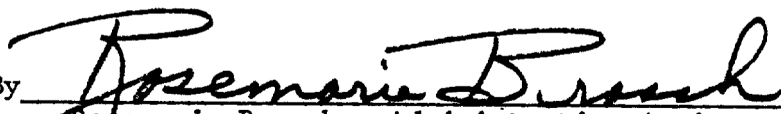
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Award No. 9398
Docket No. 8962
2-IHB-FO-'83

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 23rd day of February, 1983.