

The Second Division consisted of the regular members and in addition Referee Francis M. Mulligan when award was rendered.

Parties to Dispute: ( Leonard Miller  
( Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

The Claimant herein contends that his dismissal from the Respondent's employ was improper. Claimant (believes that he) was physically and mentally incapable of complying with the company policy with respect to an extension of his leave of absence. The record reflects such testimony being adduced at earlier hearings, however, Respondent has chosen to disregard the physical impossibility of compliance with company policy. Claimant contends that upon a complete review of all circumstances surrounding this dispute, a decision favorable to the Claimant will be rendered.

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.

Claimant entered Carrier's service on September 5, 1978, as a car carpenter. Beginning on July 14, 1979, Claimant was on a proper leave of absence which continued, with extensions, until June 7, 1980.

On May 30, 1980, Claimant was admitted to Central Community Hospital and underwent an emergency appendectomy. After a normal recovery, Claimant was discharged from the hospital on June 14, 1980.

By a letter dated June 17, 1980, Claimant was instructed to attend a hearing on his failure to return to work or to renew his leave of absence. At the hearing, Claimant frankly admitted his failure in this regard. Effective July 9, 1980, Claimant was dismissed.

Subsequently, this matter was handled as a request for leniency. As was stated in Second Division Award 7389 (Zumas):

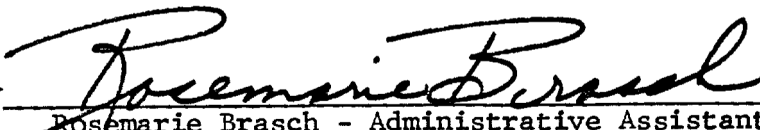
"During the handling on the property and as evidenced by the claim, it appears that the matter was treated as a request for leniency. Under such circumstances, the Board is not authorized to substitute Carrier's judgment with that of the Board."

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 25th day of May, 1983.