

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the terms of the current agreement Dynamonam John J. Piccarelli was unjustly dismissed from service of the Consolidated Rail Corporation (ConRail) on March 14, 1979.
2. That accordingly the Consolidated Rail Corporation (ConRail) be ordered to reinstate Dynamoman John J. Piccarelli to his former position with all rights unimpaired and reimbursed for all wages lost.

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 was discharged, after hearing, for excessive absenteeism and excessive lateness. During a period of less than a month, he was absent on one day and late on nine days. Testimony at the hearing verified the absence and lateness and revealed that the lateness had caused delays in starting Substation 3 on many occasions. The carrier clearly supported its allegations on the record.

The claimant had been disciplined on previous occasions for excessive absenteeism. On two occasions, the discipline assessed had been reduced by the Carrier. There is a history of excessive absenteeism which the carrier may well take into consideration, supported by the doctrine of progressive discipline.

Numerous Awards have supported the proposition that an employee may be discharged for excessive absenteeism. See Award 5049 which provided:

"Nothing in the Agreement obligates the carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts, whatever reason or excuse exists for each absence, and even without the complication of work for other employers. His practice, if permissible for him, is permissible for all employees." See also Awards 7348, 7719, 7726, 7690, and 7990."

There is nothing in the record which should cause the carrier to be lenient to the claimant because of, for example, an exemplary, long-time record.

Claimant objects to the hearing as being improper because he did not appear at the hearing and further that a union representative attended and participated at the hearing, not having been designated by him.

With respect to the first objection, the claimant cannot benefit by his failure to attend the hearing, after he had been duly notified of the time and place of the hearing. Claimant made no attempt before or since the hearing to explain his absence. This absence merely furthers the Carrier's concern about the attitude of the claimant toward his employment.

With respect to the participation by the union representative at the hearing in the absence of the claimant, while the representative may well have not participated under these circumstances, there is nothing in the transcript of the hearing which shows that the performance of the representative prejudiced the position of the claimant in any way.

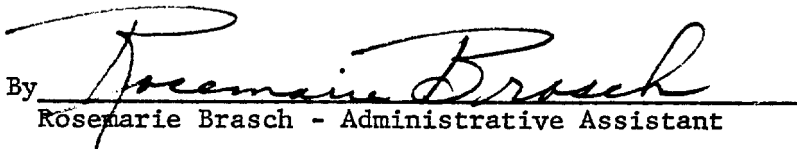
The agreement was not violated.

A W A R D

Claim is 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 13th day of July, 1983.