

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company unjustly and arbitrarily dismissed Communications Maintainer Donald G. Wrzesinski from service on August 4, 1980.
2. That the Baltimore and Ohio Railroad Company violated the current agreement when they failed to afford Communications Maintainer Donald G. Wrzesinski a fair and impartial hearing.
3. That accordingly the Baltimore and Ohio Railroad Company be ordered to restore Communications Maintainer Donald G. Wrzesinski to service with his seniority rights unimpaired, all other benefits he would have been entitled to had he not been dismissed from service and be compensated for all lost wages beginning on August 4, 1980, until reinstated to service account of the improper suspension and dismissal from 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This case involves the dismissal of an eleven month employee who absented himself for two and a half months without permission. Petitioner's argument both with regard to the fairness and impartiality of the hearing and with regard to its claim that the dismissal was unjust and arbitrary is based upon the fact that claimant was charged with violation of a general operating rule rather than with violation of the applicable section of the Shop Crafts Agreement. Petitioner urges that Engineering Department Maintenance Rule #11 (the charged violation) is in conflict with Shop Crafts Agreement Rule #19 and that claimant was actually dismissed under Rule #19 which was not referenced in the charge.

We do not agree with Petitioner either as to the alleged conflict in the two rules or as to the contention that the dismissal was predicated upon Rule #19 and not the charged violation. The operating rule in question merely requires

that employees get permission for absences. It does not restrict managerial discretion with regard to violation or to set up specific penalties. The rule in the Shop Crafts Agreement requires employees to notify their foremen as soon as possible as to the reason for absence and further provides that if an employee is absent without notifying management for 15 days he shall be dropped from the rolls and seniority roster.

Claimant's case was certainly not prejudiced by application of the more lenient of the two rules. Nor was his dismissal based upon violation of the rule he was not charged with. Although Carrier made reference to the penalty under the Shop Crafts rule in the letter of termination after finding him guilty as charged (under the operating rule), such reference was not inappropriate for the purpose of showing that the finding and discipline under the operating rule was not inconsistent with the contractual standards and protections.

It is true that the denials of claimant's appeal tend to suggest that Rule #19 was also applicable, but this after-the-fact confusion does not change the original finding of guilt under the appropriate charge or in any way mitigate the facts in the record. Claimant was not prejudiced in his ability to put on a defense by the citation of Rule #11. It was perfectly clear that the charge related to his extended absence without permission. He did not deny the absence or contend that he made any effort to protect his job during his absence by notifying his foreman that he would be out for an extended period and/or offering any reason for such absence. Furthermore he admitted familiarity with the Engineering Department Rules (under which he was charged) and that he knew it was necessary to get permission for absences but had not done so. He stated that he "... was having family problems and troubles, and I just had to pack up and leave for a while." When asked why he failed to contact his supervisor he stated there was "No legitimate reason for it at all."

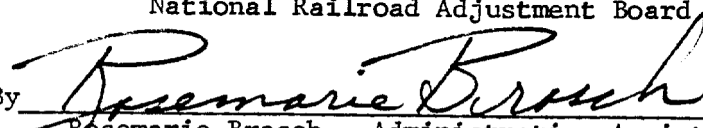
In view of this record, and despite the confusion brought into the later appeals with regard to applicability of Rule #19, we see no reason to modify Carrier's original conclusion as to guilt under Rule #11, nor to set aside the penalty for what was clearly an intolerable and continuing failure to communicate with his employer and seek permission for his extended absence.

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 13th day of July, 1983.