

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer D. L. Edmond was unjustly suspended and dismissed from service of the Carrier following a trial held on March 17, 1981.

2. That, accordingly, the Carrier be ordered to make the aforementioned D. L. Edmond 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 employes 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 a laborer employed by the Consolidated Rail Corporation, at its Beech Grove Shops, Beech Grove, Indiana. Under date of March 4, 1981, the Carrier sent a directive to Claimant instructing him to attend investigation at the office of General Foreman J. R. Troxell at 4750 Calhoun Street, Indianapolis, Indiana at 1:30 P.M., Tuesday March 17, 1981. The purpose for which the investigation was called was account Claimants alleged "absents" on days of February 3, 4, 5, 6, 9, 10, 11, 12, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27, 1981 and March 2 and 3, 1981. Claimant was also advised that if he desired, he could be accompanied by a representative and witnesses as provided in the Agreement. The record indicates that Claimant did receive and did acknowledge receipt of the notice to attend the investigation. The investigation was held as scheduled, but without the Claimant as he did not appear, however, the Organization's Local Chairman did attend and did represent him. On date of March 19, 1981, the Carrier sent Claimant notice that he had been dismissed from Carrier service.

The Employees contend that Carrier's action in dismissing Claimant from Carrier service was an arbitrary, capricious and unjust action and an abuse of managerial discretion. They further contend, but without substantiation that it is a policy at the Beech Grove Shop "to advise an employee with three written warnings before the Carrier would have a trial on an employee". They also cite various Awards in support of their position. The Employees also contended at the investigation, that Claimant had been under a doctor's care from February 6, 1981 account of an on duty knee injury sustained on February 2, 1981. No proof of any kind to substantiate this contention has been shown and Carrier claims they have no record of any such on the job injury. Carrier further contends, that the dismissal was not unjust and cites Claimants previous disciplinary record which includes four previous suspensions and two previous dismissals (returned to service both times) or an average of more than one penalty per year during the time Claimant was employed by Carrier.

Careful consideration of all of the contentions of both parties does not lead us to the same conclusions as the employees. We do not consider Carrier's action in this case as being arbitrary, capricious or unjust, nor was it an abuse of managerial discretion, in fact in view of Claimants employment record which Carrier has described as "deplorable" it seems that Carrier has shown a very considerable amount of patience. We also note that the employees have not shown any violation of Rules on the part of the Carrier, in regards to which, in Third Division Award 21858 this Board held:

"In case after case decided by this Board, we have repeatedly ruled that in order to establish a right to relief in the statement of claim, the petitioner must firstly cite provisions of the agreement which prohibited carrier from acting in the manner which petitioner challenges and secondly the petitioner must show how carriers action violated the cited provisions of the contract. Unless there exists a contractual prohibition precluding carrier from taking the action disputed, we have no authority under the Railway Labor Act to find for the petitioner."

The Employees have alleged without substantiation that Carrier is in violation of a policy, even if this had been proven, and it was not, a policy is not a rule, and accordingly not determinative in this case.

It is well established that this Board will not substitute its judgment for that of the Carrier when substantial evidence is present, if no extenuating circumstances exist, and there certainly are none in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984