

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That in violation of the current Agreement, Laborer J. W. Lovelace, Milwaukee, Wisconsin, was unfairly dismissed from service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company effective February 2, 1982.
2. That accordingly, the Carrier be ordered to make Mr. Lovelace whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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.

On February 2, 1982, the Carrier notified the Claimant that he was dismissed from service because of his failure to protect his assignment in accordance with Rule No. 30, and for violation of the conditions of Leave of Absence granted to him on January 12, 1982.

It is undisputed that Claimant was incarcerated from December 28, 1981 through February 12, 1982. On January 5, 1982, Claimant requested, and subsequently received, a 30-day leave of absence from service. The grant of leave of absence stipulated that Claimant's "failure to report for work within 72 hours from his regular shift on January 28, 1982 will be cause for dismissal." Claimant failed to report for work within 72 hours from the start of his shift on January 28, 1982, and was terminated for noncompliance with Schedule Rule No. 30, which provides in pertinent part as follows:

"An employee who, unavoidably or on account of sickness or other good cause, is detained from work shall notify his foreman as early as possible. An employee off under this rule and desiring to return to service will notify his foreman of his intention during working hours of his regular shift the day previous to his return. Except in case of emergency an employee absenting himself for three (3) days without notifying his foreman or officer to whom he is directly responsible shall be considered as out of the service and his name will be dropped from the seniority roster."

The Organization contends that Claimant's dismissal violated Rule 16(e) of the current controlling agreement, providing for fair hearing, and Rule 29, which states that employees will be granted leave of absence with privilege of renewal.


The Organization's arguments are unpersuasive for several reasons. First, there are numerous awards which have ruled that termination for failure of an employee to comply with leave of absence rules does not constitute discipline, nor does it entitle an employee to a hearing under the discipline rule. See, for example, Third Division Awards 20371, 22837, 20426; Second Division Award 6801. Moreover, the evidence suggests that the Carrier was not notified to extend Claimant's leave of absence until February 2, 1982, when Local Chairman Martina informed the Carrier that Claimant was still incarcerated. Claimant's leave of absence expired on January 28, 1982 and he was thereafter absent from duty without proper authority. An extension of leave of absence was not timely requested and Claimant presented no evidence that he could not have done so. The Board must therefore conclude that Claimant failed to comply with the terms of his leave and by such failure terminated his employment with the Carrier. See Third Division Award 22327.

All other points have been considered and the Board has determined that there are no procedural defects raised in this dispute, and that there is substantial evidence in support of the Carrier's findings on the merits.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1984.