

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 W. Moore, Chicago, Illinois, was unfairly dismissed from service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company effective March 8, 1982.
2. That accordingly, the Carrier be ordered to make Mr. Moore 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 the date of the claim, Claimant was employed as a Laborer on the 7:00 a.m. to 3:00 p.m. shift at the Bensenville Diesel House. On February 12, 1982, he was charged with failure to comply with Rule 30 and failure to protect his assignment on January 9, 24, 29, 30, 31, 1982, and tardiness on January 25, 1982. Following a hearing held February 24, 1982, the Claimant was dismissed from service effective March 8, 1982.

The Organization has appealed the Carrier's assessment of dismissal arguing that the Carrier's action was unjust and an abuse of managerial discretion, and further that the charges preferred against Claimant were not proven by substantive evidence.

The Carrier maintains that the record shows excessive absenteeism without valid reason and non-compliance with Rule 30 of the controlling agreement, which states:

*"Absence, Illness, etc.*

*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 record in the instant case discloses that during the month of January, 1982, Claimant was absent four times and was tardy on one occasion. Testimony of Carrier witnesses corroborates the documentary evidence which shows that on January 9, 1982, Claimant failed to present himself for work and did not notify the Carrier of his absence. On January 24 and 29, 1982, Claimant was again absent without notification. On January 30, 1982 Claimant notified the Carrier that he could not come to work that day because he had to take his son to the hospital. The next day, January 31, 1982, Claimant's wife telephoned from the hospital to notify the Carrier that the Claimant was in jail and could not come to work. The Carrier also proffered evidence to show that Claimant had a history of excessive absenteeism, and tardiness. On January 27, 1981, the Claimant had been terminated from service with the Carrier, but was subsequently reinstated on a leniency basis. On December 7, 1981 Claimant received a letter of warning concerning his excessive absenteeism. On January 6, 1982, another letter of warning was sent to the Claimant warning him that further absences would subject him to disciplinary action which could result in his dismissal.*

*The Claimant's testimony concerning his absences is fraught with inconsistencies and contradictions. For example, Claimant first testified that he was unable to report to work on January 29 because he had to take his wife home from the hospital. He later stated that his wife was not released from the hospital until January 30. To the extent that there is a credibility conflict on the record, there is overwhelmingly substantial evidence in support of the Carrier's findings, and no showing of arbitrary action, thus precluding this Board from weighing the conflicting evidence and substituting its judgment for that of the trier of fact. Numerous precedent cases so hold on that particular point.*

*Numerous prior awards of this Board have set forth the principle that absenteeism is serious and that excessive and habitual failure to report to assignment is sufficient grounds for dismissal. (For example see Second Division Awards 7348, 8216, 8523, 8238 and 8546). Moreover, it is well established that a Claimant's incarceration is not an excusable absence (See Third Division Award No. 12993). In applying these principles to this case, the Board finds that the Carrier's findings are based upon substantial and credible evidence. The record reflects Claimant was afforded numerous opportunities to improve his work record, but to no avail. Therefore, we will deny the claim.*