

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company violated the current Agreement when it erroneously dismissed Electrician R. J. Lowe from service of the Company on September 13, 1982.
2. Therefore accordingly, the St. Louis Southwestern Railway Company be ordered to compensate Electrician R. J. Lowe eight (8) hours each day, five (5) days per week including holidays at the pro rata rate of pay, commencing September 13, 1982 and ending on the date he is returned to service, both dates inclusive. In addition, Mr. Lowe be returned to service with all seniority rights unimpaired and all other benefits that accrue to his position.

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.

The Claimant was notified to attend an investigation to develop facts and place responsibility, if any, on a charge that he had violated that portion of Carrier's Rule 810, which reads:

"Continued failure by employees to protect their employment shall be sufficient cause for dismissal."

Subsequent to the investigation, the Employe was notified that he had been found guilty and was dismissed from the service.

The Carrier found the Claimant to have been absent from his place of employment approximately 28% of the time. It argues that this represents an excessive absenteeism rate that is intolerable and is, therefore, just cause for discharge.

The Organization essentially argues that the Claimant reported off with his Supervisor, on the dates in question, for reasons of personal sickness or sickness in the immediate family. Consequently, the Carrier was aware of his reasons for laying off and, thus, the Organization contends he complied with the provisions of Carrier's Rule 15, and the discipline assessed was not appropriate under the circumstances.

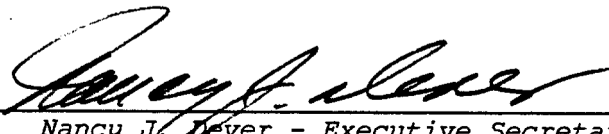
The Board has reviewed the voluminous record and we find evidence adduced in the investigation in support of the charge against the Claimant. While the Board understands the arguments advanced by the Organization, it is also established by numerous awards of the Division that when an employe consistently absents himself from the work place, there does come a time when the Carrier may reasonably conclude that the employment relationship may be terminated. However, given the facts and circumstances before us in this dispute, we find the penalty assessed to be unduly harsh. Accordingly, the Claimant is to be restored to duty with seniority rights restored, but without back pay. He is to understand that this action provides a last opportunity to demonstrate that he can be a reliable and valuable employe of the Carrier.

A W A R D

The claim is sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1985.