

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the Carrier's action in dismissing Laborer Lawrence Spates from service on December 13, 1983, was indeed harsh, out of proportion, excessive and constituted an abuse of discretion.
2. That accordingly, the St. Louis Southwestern Railway Company restore Laborer Lawrence Spates to service-
 - (a) with his seniority rights unimpaired;
 - (b) with compensation for all time lost, plus 18% per annum compounded annually on the anniversary of this claim;
 - (c) make whole all vacation rights;
 - (d) paid premiums (or hospital dues for hospital, surgical, and medical benefits) for all time held out of service;
 - (e) pay premium for his group life insurance for all time 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 employee or employees involved in this dispute are respectively carrier and employees 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, Lawrence Spates, a Laborer for the Carrier, was charged with violation of Rule 801 involving insubordination and Rule 810, employees absenting themselves from their employment without proper authority. As a result of an investigation held on December 13, 1983, he was dismissed from service. The record shows that the Claimant was instructed on two separate occasions on October 6, 1983 to clean the lunchroom. Subsequent to the second instruction, the Claimant left the premises of the Carrier. The Claimant did not return to work that day.

The Organization argues that the Claimant had a record which contained no previous disciplinary problems. The Carrier notes that the Claimant had been dismissed previously during 1978 for excessive absenteeism. The Organization stated that the Claimant left the premises due to health problems. However, there was no showing during the investigation or in the record that the Claimant had health problems on the date in question serious enough to cause him to leave prior to completing his assignment. Finally, the Organization argued that discharge was not appropriate in this case, that even if the Board finds that the Claimant was guilty as charged, there are extenuating circumstances which should lead to a lesser penalty.

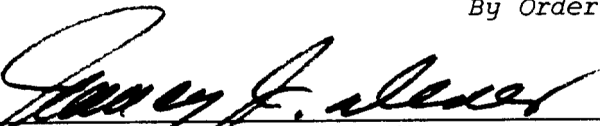
The Claimant is charged with serious violations of the Carrier's rules. The Board notes that the Claimant has had a previous dismissal on his record and we can find no evidence presented which would lead to any mitigation in this case. Therefore, this Board, upon review of the entire record before it, has concluded that this claim must be denied.

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 4th day of September 1985.