

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
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Laborer A. W. Carswell, I. D. No. 166780, was unjustly dismissed from service of the Seaboard System Railroad on October 14, 1983, after a formal investigation was held in the office of Mr. R. D. Brigman, Jr., Master Mechanic and Conducting Officer, on September 16, 1983.
2. That accordingly, Laborer A. W. Carswell be restored to his regular assignment at Uceta Shops, Tampa, Florida, compensated for all lost time and that he be properly restored to his rightful position, vacation, health and welfare benefits, hospital, life and dental insurance be paid effective October 14, 1983 and payment of 10% interest rate be added thereto.

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, A. W. Carswell, a laborer for the Carrier at their Uceta Shops in Tampa, Florida, in service since September 18, 1974 was dismissed on October 14, 1983 as a result of an investigation held on September 16, 1983. The Claimant was charged with violating Rule 26 involving failure to protect his assignment. On August 27, 1983, the Claimant was due to report to work at 3:30 p.m. He did not report for work that day, and the Carrier received no call marking him off.

The Organization argues that the Carrier violated Rule 28 which called for a fair hearing in matters such as this. They noted that the employe became ill on the date in question and brought in medical evidence to the Carrier on the following day. In addition the Claimant's wife tried to mark him off but was unsuccessful. The Claimant complied with Rule 19 which requires that the Carrier to be notified "as early as possible." Finally, the Organization stated that past tardiness has nothing to do with this case. The Claimant was charged with habitual tardiness, and the Claimant's tardiness in the past has nothing to do with the absence on the date in question.

The Carrier argued the Claimant had many previous violations, particularly in the area of absenteeism, and the facts show that he did not protect his assignment on the date in question. There were three Supervisors available until 5:00 p.m. on August 27 and none of them received a call either from the Claimant nor from his wife. With respect to the issue of tardiness, the Carrier points to the fact that this was indicated in the original investigation letter dated September 7, 1983.

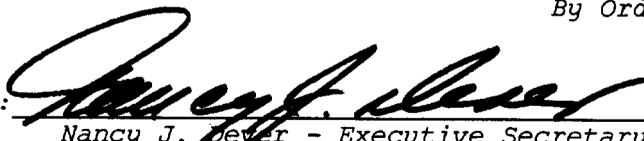
On review of the evidence presented the Board finds that in fact the Claimant has an extremely poor record with the Carrier. He was given suspensions in 1978, 1980, 1981, and 1982. In addition on June 2, 1983 the Claimant was dismissed from service for violations of the same rule with which he is charged in this case, and he was reinstated on a last chance basis with a suspension. We find also that the Claimant did fail to protect his assignment on the date in question and that he was afforded a fair hearing as provided for in Rule 28. This Board can find no reason to mitigate the penalty imposed by the Carrier and, therefore, we will deny this claim.

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 23rd day of October, 1985