

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant S. R. Jones was unjustly dismissed from service of the Seaboard System Railroad on February 2, 1984, after a formal investigation was held in the office of F. L. Miracle, Assistant Master Mechanic, and conducted by H. M. Dudley, Master Mechanic, on January 11, 1984.
2. That accordingly, S. R. Jones, Service Attendant, be restored to his regular assignment at Corbin Shops with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life, and dental insurance premiums be paid and compensated for all lost time from February 2, 1984, plus any overtime lost and the payment of 10% interest rate 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 employees 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 employed as a Service Attendant at Corbin, Kentucky with a regular assignment 7:00 AM to 3:00 PM. A report was made by the Claimant's Supervisor on December 29, 1983 that the Claimant did not report for his regular assignment on that date.

The Claimant was given written notice dated December 30, 1983 to report for formal hearing on January 11, 1984 to determine the facts and place responsibility, if any, in connection with his failure to protect his regular assignment on December 29, 1983; failing to report off to his Supervisor and insubordination. Therein he was charged with violation of Rules 3, 5 and 7 of the Rules and Regulations of the Mechanical Department, Seaboard System Railroad.

The notice informed him that he could have representation and presence of any witnesses who had knowledge of the matter being investigated. The notice also informed him that his personal record file would be reviewed at the close of the hearing.

The hearing was convened as noticed. The Claimant was represented; he had no witnesses. There were three witnesses for the Carrier, one of whom was the Claimant's immediate Supervisor.

The Transcript of the hearing discloses that the Claimant did not report to work for his regular shift on December 29, 1983 and that he did not contact his Supervisor at any time to cover his absence. His Supervisor testified that he tried twice during the shift to contact the Claimant at his home telephone number. The Supervisor further testified that those answering the telephone did not know where the Claimant was or anything about him.

The Claimant testified that when he reported for duty on December 30 he told his Supervisor that he had trouble with his automobile when returning from the City where he had visited, some 600 miles away from his home in Corbin. He testified that the driving time is ordinarily eight and one-half hours; that he departed at 6:00 PM, December 28 but did not arrive home until 3:30 PM on December 29. He admitted that he did not at any time try to call in and further admitted that he should have made an extra effort to do so.

At the conclusion of the testimony, and in his presence and that of the others at the hearing, the Claimant's personal record was reviewed and made a part of the proceedings.

In letter dated January 11, 1984, the Claimant was notified that he was guilty as charged and that he was dismissed from the Carrier's service effective at 3:00 PM, February 2, 1984.

The Organization contends that the Claimant was unjustly treated, did not violate the rules as charged and that such action was absurd and uncalled for in view of his having worked for the Carrier since June 6, 1945.

As opposed, the Carrier contends that the Claimant was afforded a fair and impartial investigation; that the evidence of record supports the conclusion that the Claimant was guilty as charged; that the seriousness of his offense and extensive disciplinary record fully justified dismissal.

It is plainly evident that the Claimant did not report for his assignment on time and that he made no effort to report to his Supervisor to receive permission before the starting time to be off of his shift on December 29, 1983.

It is well known and equally recognized that the employer has a right to expect its employees to report to their assignments on time. The Awards of this Board and of this Division are replete to the extent that recitation of the numbers is no longer necessary in upholding the right of the Carrier in that regard. Moreover, those Awards also recognize the right of the Carrier to establish reasonable rules governing the conduct of its employees. Such rules exist here and were properly documented at the investigation.

The Awards of the Board and of this Division similarly hold that an employee's service record may be properly considered in determining the measure of discipline after a finding that discipline is warranted, based upon the record disclosed in the Transcript of the accorded hearing.

The personal record involved here contains thirteen entries relating to discipline, ten of which extend from March 1947 to November 21, 1978. One is for a 60-day suspension and one is a dismissal for excessive absenteeism, those two preceded by six prior written reprimands for absenteeism.

Starting on May 10, 1983, the Claimant received a 45-day suspension and two disciplinary entries, the last of which was for failure to protect his assignment on time and is dated December 20, 1983, just nine days prior to his absence on December 29, 1983.

Our examination and consideration of all the evidence, as well as review of the Claimant's personal record, leads us to uphold the findings of the investigation and of the discipline assessed. Specifically, we find that the investigation was conducted in a fair and impartial manner, that the Claimant was not unjustly treated, that he was in violation of the rules as charged and that his dismissal was neither absurd nor uncalled for.

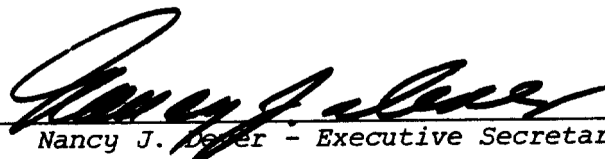
We are unable to find that the judgment of the Carrier or the penalty of dismissal assessed by it was arbitrary, capricious or in any way an abuse of managerial discretion. We will deny the claim in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985