

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

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Metro-North Commuter Railroad

Dispute: Claim of Employees:

1. That under the current Agreement, the Consolidated Rail Corporation (Conrail) unjustly dismissed Electrician S. R. Jackson from service effective November 2, 1982.

2. That accordingly, the Metro-North Commuter Railroad be ordered to restore Electrician S. R. Jackson to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period order to make him whole; and expunge 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 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 were given due notice of hearing thereon.

The Claimant was employed by the Carrier as an Electrician at its facility located at Grand Central Station, New York. Following a Trial that was held on October 28, 1982 the Claimant was dismissed from service for the following reasons: 1) his failure to report for duty on July 23, 24, 25, 28, 29, 30, 31, August 1, 4, 5, 6, 1982 which in light of his previous record constitutes excessive absenteeism; and 2) his failure to mark off properly on July 23, 24, and 25, 1982.

Before considering the merits of the instant dispute, the Organization contends that the Claimant was deprived of a fair and impartial trial in violation of Rule 6-A-1(a) because at the Trial the Conducting Officer called the Claimant to be a witness against himself. According to the Organization, the burden of proving the offense upon which the disciplinary penalty is based was improperly shifted from the Carrier to the Claimant.

In light of the offenses by the Carrier to have been committed by the Claimant, namely, excessive absenteeism and failure to mark off properly, leads this Board to conclude that the Claimant was not deprived of a fair and impartial Trial as required by Rule 6-A-1(a). The Claimant was called by the Conducting Officer at the Trial to provide testimony as to whether he was absent and failed to properly mark off on the dates referred to in the charges. Obviously, the dates were known to the Carrier and set forth in their records. Indeed, there was no factual dispute over whether the Claimant was absent and failed to properly report off on the specific dates in July and August, 1982. The Grievant was not prejudiced by answering "yes" and "no" to whether he was absent and whether he properly marked off on the dates in question. Moreover, it is fundamental that an employee is obligated to furnish the reasons why he has been absent from work. That the Claimant furnished such testimony at the request of the Conducting Officer did not impair his right to a fair and impartial Trial. Thus, given the offenses in question, the Claimant was not deprived of due process when at the request of the Conducting Officer he furnished testimony on his absenteeism and failure to properly mark off.

Turning to the merits of the dispute between the parties, the Claimant was absent from work between July 23 and August 6, 1982, and failed to mark off properly on July 23, 24, and 25, 1982. The Claimant's absence from work and failure to mark off properly was caused by his arrest and incarceration due to "legal problems". On August 10, 1982, the Claimant's case "was finally dropped". In Second Division Award No. 7842, the following was stated:

"This Board has long held that institutional confinement will not excuse an unavoidable absence since it is incumbent upon employees to meet their employment obligations."

Clearly, the Claimant failed to meet his employment obligations between July 23 and August 6, 1982. The Claimant indicated that during his incarceration, the only person he "made contact with was [his] sister". He went on to say that he instructed his sister to notify the Carrier of his absence but she apparently failed to do so. The Carrier was first apprised of the Claimant's incarceration on July 28, 1982 when R. Lombardi, the Organization's Representative notified the Company. Lombardi was trying to locate the Claimant after his absence of three (3) days from work, and came upon this information after calling the Claimant's wife. In any event, on July 23, 24 and 25 the Claimant who was "unable to report for work or detained from work for any cause", failed to notify his shop or work location "as soon as possible", which is required under Rule 8-H-2. (Emphasis added).

The Claimant entered the service of the Carrier on January 8, 1982. Thus the Claimant's failure to report for duty between July 23 and August 6, 1982 and his failure to mark off properly on July 23, 24 and 25, 1982, roughly seven (7) months after entering the service of the Carrier constitute just cause for discharge.

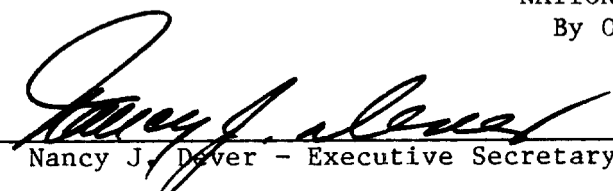
The Claimant was disciplined for offenses which occurred subsequent to July and August, 1982. On September 29, 1982 the Claimant was given a fifteen (15) day disciplinary suspension for "Excessive Absenteeism and Failure to Mark Off Properly"; on October 4, 1982 he received a thirty (30) day disciplinary suspension for "Assuming An Attitude of Sleep; and on November 2, 1982, the Claimant was given a sixty (60) day disciplinary suspension for "Absenting Yourself from Your Work Location". Such conduct cannot be given any weight with regard to the instant case, even though these offenses could be characterized to be of a continuous nature. There is nothing in the charges which covers these offenses committed by the Claimant since August 6, 1982 and it would be highly improper in this case to give them any weight. Nevertheless the Grievant's absenteeism from July 23 thru August 6, 1982 combined with his failure to mark off properly on July 23, 24 and 25, 1982 roughly seven (7) months after he joined the service of the Carrier constitutes just cause for discharge.

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 9th day of July 1986.