

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer G. Price, Chicago, Illinois, was unfairly dismissed from service of the Chicago and Northwestern Transportation Company, effective July 29, 1987.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to make Mr. Price whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from 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 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 were given due notice of hearing thereon.

The basic facts in this case are set forth as follows: On June 20, 1987 Claimant was employed as a laborer at Carrier's Proviso Diesel Shop. He called in sick on that day and did not report for work. On June 21, 1987, he again called and reported that he was advised by his physician to take off because of high blood pressure. He further stated that he would remain off the job about two weeks. Following his absence on June 22, 1987, Carrier sent him a notice to appear for a formal Investigation on June 30, 1987 and said notice was received by him on June 24, 1987. The Investigation was postponed at Claimant's request and was rescheduled on July 14, 1987. Claimant did not appear at the Investigation and it was again postponed until July 28, 1987.

The Investigation was held on July 28, 1987, but neither Claimant nor his Representative appeared at the proceeding. Accordingly, based upon the Investigative record and previously assessed discipline, Claimant was apprised by letter dated July 29, 1987 that he was removed from service. This disposition was appealed by the Organization, pursuant to the applicable provisions of the Controlling Agreement.

In support of his petition, Claimant contended that the Investigative Transcript was not received by the Organization until the 59th day, from the date discipline was assessed. Hence, it prejudiced his response. He also observed that neither he nor his Representative were present at the Investigation and consequently, he was effectively precluded from conducting a thoughtful defense.

As to the substantive merits of Carrier's actions, Claimant asserted that he complied with the requirements of Rule 33 by notifying Carrier as early as possible of his absences. In essence, he argued that he did not violate any safety rule of Agreement provision. He maintained that although he was absent on June 20, 21, and 22, 1987, he fully complied with Carrier's rules regarding absence notification procedures.

Carrier contended that it had the right to take prompt disciplinary action, since Claimant was clearly on notice that recidivist absences would be subject to discipline. It pointed out that he had waived two prior Investigations and accepted suspensions for charged attendance infractions. (Claimant was assessed other disciplines.) It noted that he had not submitted medical evidence to substantiate his absences on June 20, 21, and 22, 1987 and did not report to work prior to the Investigation notwithstanding explicit notice.

As to the procedural issues raised, Carrier asserted that since neither Claimant nor his Representative appeared at the Investigation, there was no Agreement requirement to send that Investigative Transcript to an unnamed Representative. Further, it maintained that Claimant was apprised of the Investigation and, accordingly, exercised a free choice when he did not attend the Hearing or request a union official to represent him.

In considering this case, the Board finds no procedural violations. Claimant was fully informed of the Investigation and had the opportunity to attend the proceeding, or alternatively, request an additional postponement. By his own inaction, he failed to report to work when requested, failed to submit medical documentation and failed to attend the Investigation. Under these circumstances, he acted at his peril when he pursued such an indifferent course of action.

In a similar vein, the Board finds that the record evidence fully supports the attendance charges namely, that Claimant was inexcusably absent on June 20, 21, and 22, 1987 and discipline was thereby appropriate. He offered no evidence prior to the Investigation or at the Investigation to explain these absences. He was plainly absent without justification. In view

of his past disciplinary record, Carrier had the right to remove him from service, since he was implicitly on notice that removal was indeed possible. Its actions were not per se unreasonable.

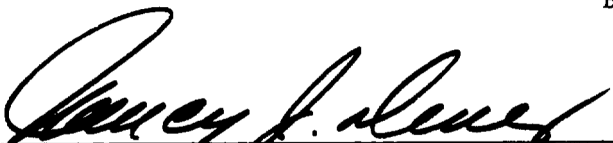
However, there are persuasive indications that Claimant was experiencing serious domestic troubles and stress during this period, which might explain his implausible actions. Upon the record and factoring these mitigative considerations into our deliberations, we will restore Claimant to service without back pay on a last chance basis with the understanding that we will unhesitatingly sustain a dismissal action for recidivist conduct.

A W A R D

Claim 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 28th day of June 1989.