

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current and controlling agreement, Service Attendant W. E. Langley was unjustly dismissed on January 20, 1986, by Mr. C. I. York, General Foreman and subsequently dismissal was upheld after a formal investigation was held on January 29, 1986, by Mr. J. L. Aleshire, General Car Foreman, Roanoke Territory.

2. That accordingly, W. E. Langley, Service Attendant, S.S. No. 238-90-4480, be restored to his assignment at Alexandria, Virginia, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid and compensated for all lost time, effective January 20, 1986, and the 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.

Claimant entered the service of the Carrier as a Service Attendant on November 13, 1973. He worked at the Carrier's Alexandria, Virginia, Yard, holding a regular third shift assignment with the duties of servicing diesel locomotives (cleaning, sanding and fueling) and cleaning the shop area. On January 20, 1986, he was charged with failure to protect his assignment on January 19, 1986, by reporting to work thirty-five minutes late and by failing to advise his supervisor that he would be late. As a result of this incident and his prior disciplinary record, he was dismissed.

According to testimony, January 19, 1986, was the first time the Claimant had reported to third shift on a Sunday. He maintained that he was unfamiliar with the weekend public transportation connections in the Washington, D.C./Virginia area, and had thought that allowing one and one-half hours for his commute to work would be sufficient for him to arrive on time. However, he did admit that he was aware that he would not be able to take his usual mode of transportation, the Metro, on a Sunday night. And, he offered no excuse for his failure to contact his supervisor while in transit about his lateness.

Claimant's previous disciplinary record reads as follows:

11/24/73: Established seniority
07/05/84: Suspended three days - 20 minutes
tardy on 7/3/84
10/03/84: Suspended five days - absent
10/2/84 without justifiable cause
04/19/85: Suspended five days - absent 3/17,
3/18 without justifiable cause
05/13/85: suspended 15 days - absent without
justifiable cause
10/17/85: Suspended 30 days - tardy on four
occasions in late September, early
October
12/06/85: Suspended 20 days - failure to
perform assigned duties

Rule 30 of the controlling Agreement, "Employees Unavoidably Absent," reads in pertinent part:

"(a) In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

(b) The provisions of paragraph (a) shall be strictly complied with. Excessive absenteeism (except due to sickness under paragraph [a] above) and/or tardiness will not be tolerated and employees so charged shall be subject to the disciplinary procedures of Rule 34..."

In respect to absenteeism and tardiness, the Board notes that an employee's habitual lateness or habitual failure to report to work constitutes a serious liability to the Carrier. As stated in Second Division Award 7852:

"An employee has an obligation to report to work regularly and on time, regardless of his personal problems; this is a fundamental part of the employment relationship. No company, much less a railroad, can function effectively if it tolerates erratic attendance."

In the instant case, the evidence presented before this Board contained numerous past examples of tardiness and absenteeism on the part of the Claimant. As a result of these infractions, he had received six suspensions, totalling 78 days, with the most recent 20-day suspension occurring only six weeks prior to the current incident. As stated in the above mentioned Award, and in similar Second Division Awards 7348, 10396, 10673 and 5409, a Carrier is not obligated to retain in service those employees who are, "...repeatedly unable or unwilling to work the regular and ordinarily accepted shifts..." Second Division Award 5409. Since this Claimant had already received repeated warnings and numerous suspensions regarding his attendance, and was on notice during the period of the final incident, his failure to protect his position was all the more inexcusable.

Other Second Division Awards have consistently held that a Carrier's disciplinary action, "...can be successfully challenged before this Board only on the grounds that it was arbitrary, capricious, excessive or an abuse of managerial discretion..." See Second Division Award 4001. Since no evidence has been admitted to demonstrate improper action on the part of the Carrier, nor has any evidence been presented to contradict the original pattern of facts, this Board must sustain the penalty of dismissal.

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 26th day of July 1989.