

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

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

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer R. Cain, Chicago, Illinois, was unfairly dismissed from service of the Chicago and Northwestern Transportation Company effective September 23, 1988.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to make Mr. Cain 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 waived right of appearance at hearing thereon.

As the result of an Investigation held on September 22, 1988, the Claimant was notified that he was dismissed from service effective September 23, 1988 for failure to protect his assignment on August 28, 30 and September 1, 2, 5 and 6, 1988. The Board has reviewed the transcript and the evidence and concludes that the Organization did not present a strong case for mitigation on the basis of severe emotional problems. The Claimant was neither

incapacitated nor was he hospitalized. Further, the Claimant's medical care did not commence until well after he failed to protect his assignment. The discipline issued the Claimant was in accordance with the Carrier's system of progressive discipline. The Claimant's record demonstrates an inability on his part to consistently protect his assignment. Introduction of the Claimant's prior record provided the Board with relevant evidence. This record dealt almost exclusively with Claimant's absenteeism and failure to protect his assignment. Such relevant evidence did not deprive the Claimant of any due process rights.

Accordingly, the Board finds that the record and previous discipline support the discharge of the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1990.