

**Award No. 4656**  
**Docket No. 4655**  
**2-B&O-BM-'65**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'**  
**DEPARTMENT, (A. F. of L.-C. I. O. (Boilermakers))**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** 1. That under the current agreement, Boilermaker Helper R. L. Sterling was unjustly suspended from service on April 11, 1963, and unjustly dismissed from service on May 3, 1963.

2. That accordingly, the Carrier be ordered to restore Boilermaker Helper, R. L. Sterling to Service with Seniority Rights unimpaired, compensate him for all time lost retroactive to April 11, 1963, make Claimant whole for all Vacation Rights, pay the Premium for Hospital, Surgical & Medical Benefits for all time held out of Service, pay the Premium for Group Life Insurance for all time held out of Service.

**EMPLOYEES' STATEMENT OF FACTS:** Boilermaker Helper R. L. Sterling, hereinafter referred to as the claimant, was employed by The Baltimore & Ohio Railroad Co., hereinafter referred to as the carrier at Martinsburg, W. Va., maintenance of way shop as a boilermaker helper with seniority date of October 1, 1943.

Claimant was suspended from the service on April 11, 1963 and given the following letter:

"Martinsburg, W. Va.  
April 11, 1963

Mr. R. L. Sterling  
No. 116779  
Boilermaker Helper

You are hereby notified in accordance with the rules of Wage Agreement under which you are working, to report to the office of Engineer of Shops & Reclamation at 10:00 A.M. on April 19, 1963 for hearing on the following matter:

'Chronic Absenteeism'

without merit. The carrier respectfully requests that this division so hold and that the claim in its entirety be declined.

**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 employe 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.

Rule 19, Absence from Work, provides as follows:

"In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible either by telephone, messenger, or United States Mail. Employes absenting themselves for fifteen (15) days without notifying Management shall be considered as out of service and dropped from rolls and seniority roster."

On April 11, 1963, Claimant was suspended and was sent written notice of a hearing on April 19th on the charge of "Chronic Absenteeism" without stating any number of days' absence.

On May 3rd after the hearing, he was notified of his dismissal from service because of 70 days absence without notice between February 1962 and April 11, 1963.

Of these 70 days' absence, 50 occurred during ten months in 1962, various months' absence being from 2 to 8 days with an average of 5 days per month. The Carrier's record was read to him and he was asked:

"These records show you were reported off sick for 16 days and were absent 50 days without reporting off. Is this record correct?"

His answer was:

"I guess this is, I called in when I was ready to work."

This is the only evidence in the record concerning his absences, except the following:

"You were absent on April 8, 9 and 10 of 1963. Did you not call in at 3:30 P.M. on Wednesday, April 10, and say you would be at work on Thursday, April 11, 1963, but did not show up for work on Thursday, April 11?"

"That's correct."

This shows that he was absent on April 11th without reporting off; but there is no evidence that this was true of the other absences claimed in 1963. There was this further evidence:

"Did I not call you into my office on January 28, 1963, and warn you that you could be taken out of service for missing so much time?"

"I don't remember the exact date but I remember you calling me in."

Thus the warning was admitted; and it apparently came quite late during the fifteen month period with only one subsequent unreported day's absence proven.

The record thus shows 51 days of absence without reporting off, amounting to from 1 to 8 days in each of 11 different months, but whether for continuous periods in any month is not shown. As the highest combined totals for two consecutive months was 13 days, no one absence can have totalled 15 days.

Therefore Claimant clearly did not violate the provision of Rule 19 reading:

"Employees absenting themselves for fifteen (15) days without notifying Management shall be considered as out of service and dropped from rolls and seniority roster."

While the sentence does not expressly say "for fifteen consecutive days", or "for a period of fifteen days", it can have no other meaning. Certainly it does not warn Claimant of automatic dismissal if he, without notice, absents himself for three days on five widely scattered occasions, or for five days on each of three such occasions, or if he thus absents himself for one day at fifteen different times during his 19½ years' service. Apparently the provision was not so interpreted, for Claimant was absent without notice during 18 different days in February, March, April and May of 1962, nearly a year earlier. Furthermore, he was not charged with absenting himself for fifteen days without notice, but with chronic absenteeism.

However, brief as it is, the record shows Claimant guilty of the charge, since he admitted the fifty absences without notice in 1963, and gave notice only when he was ready to return.

Claimant was asked:

"Isn't it a fact that you are a heavy drinker and get drunk quite often?"

His answer was "No, not necessarily," and the hearing record does not show that his absences were due to intoxication. We therefore assume that they resulted from illness or some other valid cause, which still does not excuse failure to give notice as early as possible.

Under the circumstances Claimant's discharge appears excessive, although his suspension was clearly justified and further discipline was warranted. Claimant should be returned to service with seniority rights unimpaired, but without compensation for time lost.

#### AWARD

Claim sustained to the extent that Claimant be returned to service with seniority rights unimpaired, but without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: William B. Jones  
Chairman

E. J. McDermott  
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

(The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the interpretation was rendered.)

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**INTERPRETATION NO. 1 TO AWARD NO. 4656  
DOCKET NO. 4655**

**NAME OF ORGANIZATION:**

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Boilermakers)**

**NAME OF CARRIER:**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**QUESTION FOR INTERPRETATION:** "Does the language in Award No. 4656, reading:

"Under the circumstances Claimant's discharge appears excessive, although his suspension was clearly justified and further discipline was warranted. Claimant should be returned to service with seniority rights unimpaired, but without compensation for time lost.

**AWARD**

"Claim sustained to the extent that Claimant be returned to service with seniority rights unimpaired, but without compensation for time lost."

when considered in conjunction with Part 2 of the Claim of Employees reading:

- "2. That accordingly, the Carrier be ordered to restore Boilermaker Helper, R. L. Sterling to Service with Seniority Rights unimpaired, compensate him for all time lost retroactive to April 11, 1963, **make Claimant whole for all Vacation Rights**, pay the Premium for Hospital, Surgical & Medical Benefits for all time held out of Service, pay the Premium for Group Life Insurance for all time held out of Service." (Emphasis added)

mean that the Claimant is entitled to have his vacation rights reinstated unimpaired?

The phase of vacation rights herein involved is set forth in the Employees' Statement of Facts as follows:

"The Carrier improperly and unjustly discharged the Claimant on May 3, 1963, and thereon this Division rendered Award 4656 dated February 19, 1965, accompanied by its order which required compliance by the Carrier on or before March 18, 1965. The Carrier restored the Claimant to service with seniority rights unimpaired but asserts 'the Board intended to restore Mr. Sterling on a leniency basis' and has refused to reinstate his vacation rights unimpaired.

"As a result of Carrier's position, it has treated Claimant for vacation purposes as though he were a new employee and taken the firm position that he is only entitled to one week of vacation in the year 1966.

"If it was the intent of Award 4656 to restore Claimant's vacation rights unimpaired, he would be entitled to a minimum of three weeks vacation in 1966 and possibly four weeks, depending upon the number of years service with Carrier in which he performed sufficient service in a year to qualify for vacation in the succeeding year."

In other words, the question is whether under this Award the 1966 vacation which the Claimant earned by his 1965 compensated service should be limited to one week as if he were a new employee, or should extend to whatever period the Agreements provide according to the entire service covered by his seniority period.

The Carrier's position is that the Board did not expressly sustain the claim for vacation rights and that it intended to return Claimant to service on a leniency basis; that he was therefore in effect a new employee.

But the Board expressly held that Claimant's discharge was not warranted, and in effect it reduced his discharge to suspension with seniority rights unimpaired.

In Referee Morse's Interpretation of November 12, 1942, to the Vacation Agreement of December 17, 1941, he said (p. 84):

"However, when a suspension is given as discipline (as distinguished from a dismissal), the employee relation shall not be deemed to have been terminated within the terms of Article 8 of the Vacation Agreement."

In other words, the continuity of the employer-employee relation is not destroyed. The same result necessarily follows from this Board's reduction of the discipline to a suspension and its direction that his seniority rights be unimpaired. The continuity not having been broken Claimant was entitled to whatever future vacations his past and future service might entitle him, and to that extent his vacation rights were necessarily restored.

We consequently interpret Award 4656 as entitling Claimant to a 1966 vacation as outlined in the last paragraph of Employees' Statement of Facts hereinbefore quoted.

To that extent the award as made requires an affirmative answer to the question submitted for interpretation.

Referee Howard A. Johnson, who sat with the Division as a Member when Award No. 4656 was rendered, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1966.