



Award No. 6240

Docket No. 6102

2-IC-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Repairer F. R. Eubanks, Jr., was unjustly dismissed from the service of the Illinois Central Railroad on June 23, 1970.

2. That accordingly the Illinois Central Railroad be ordered to reinstate Car Repairer F. R. Eubanks, Jr., to service with seniority unimpaired, paid for all time lost, and any other benefits he would be deprived of while being held out of service.

EMPLOYEES' STATEMENT OF FACTS: Car Repairer F. R. Eubanks, Jr., hereinafter referred to as the claimant, entered the service of the Illinois Central Railroad, hereinafter referred to as the carrier, in the year 1962. At the time of the incident giving rise to the instant claim, claimant was regularly employed by carrier in the Car Shop, Memphis, Tennessee with assigned hours of 7:00 A.M. to 3:30 P.M., Monday through Friday, with rest days Saturday and Sunday.

On June 9, 1970, carrier's Shop Superintendent F. E. Collins addressed the following letter to claimant:

"Memphis, Tennessee
June 9, 1970
(Johnston Car Shop)
PR-5997

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. F. R. Eubanks, Jr.
513 Howard Road
Memphis, Tennessee 38109

earned during his dismissal and what he would have earned had he not been dismissed. The company submits that the dismissal was proper, and the claim should be denied.

The company has shown that the union never claimed that the claimant was not guilty of violating the rules. Neither did it allege that the company violated any rule of the agreement through its action in dismissing the claimant. Therefore, it is clear that the claim is a request for leniency and, as such, is not within the authority of the National Railroad Adjustment Board. The claim should be dismissed.

Without prejudice to the position that the claim is a request for leniency, the company has shown that the claimant was, in fact, guilty as charged, and deserving of the discipline assessed. In light of the claimant's past record, dismissal was justified. Finally, the company has shown that if the claim is sustained, the rule limits remuneration to net wage loss — the amount he would have earned less any outside earnings.

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 waived right of appearance at hearing thereon.

The record herein reveals an inability or unwillingness of the claimant to maintain a reasonable attendance record. He had been duly warned, orally and in writing, by supervision that his failings in this area would, if not overcome and corrected, result in serious disciplinary penalties. His conduct in May, 1970, indicates that the efforts of management to effectuate an improvement in his compliance with reasonable attendance requirements, had not made an impression upon him. The Carrier had every reason to believe that if he were retained in its employ, his improper conduct would continue.

This Board has repeatedly pointed up the detrimental effect of absenteeism upon the operation of the railroads. (Award 1814-Carter, Award 5049-Johnson.) The confusion and disruption created when an employee absents himself from work without due notice to supervision is harmful, not only to the Employer, but to other employees as well. We, therefore, cannot fault management when it takes effective measures to deter excessive absenteeism and tardiness. The Petitioner Organization recognized this when it negotiated agreements with carriers with rules such as Rule 39 of the Controlling Agreement between the parties hereto.

The Petitioner stressed alleged mitigating circumstances for the admittedly violative conduct of the claimant for the period May 18 through May 28, 1970. This Board has found it inappropriate for it to substitute its judgment for that of the employer in determining whether certain conditions might warrant excusing failure to comply with reasonable standards of per-

formance. We have stated that if claimant was afforded a fair hearing, and the record indicates substantial evidence to sustain a finding of infractions and the penalty imposed was not arbitrary, capricious, or an abuse of discretion we will not reverse the determination by the Carrier. (See Awards 1323, 3092, 2087, 2769, 3874, 4000, 4001, 4098, 4132, 4195, 4199 and 4693.)

Even if, contrary to many of our previous Awards, we were to consider a plea for leniency for the claimant, we find that he did not show a sufficient concern for his job and interest in his obligations as an employe during the period May 18 through May 28, 1970 to warrant such consideration.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1972.