

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: ( System Federation No. 42, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

1. That under the current agreement Carman Apprentice H. S. Jackson, III, was unjustly dismissed from the service of the Carrier effective June 19, 1972 at 12:30 p.m.
2. That accordingly the Carrier be ordered to reinstate this employee with seniority rights unimpaired, compensate him for all time lost, at 6% per annum interest, make him whole for all vacation rights and all health and welfare and insurance benefits, pension benefits, including Railroad Retirement and Unemployment Insurance, and all benefits that would have accrued to him during the period of his dismissal from service.

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.

Claimant was discharged from service for being absent without good cause from May 15 until May 22, 1972, for furnishing false information, and for unsatisfactory service. On four of the six dates, May 15-18, Claimant was in jail on charges that eventually resulted in a two year probationary term for "Attempting to Elude Police". It is for this Board to determine whether his incarceration on those dates falls under the aegis of Rule 19 of the Agreement, which reads, "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."

Does Claimant's incarceration constitute unavoidable absence from work on account of sickness or any other good cause? This Board has previously held that confinement in jail does not constitute unavoidable absence for good cause (Award 4689, Second Division, Daly, April 28, 1965).

Organization offers Award 4160 of this Division to support their contention that Claimant's absence was for good cause. But the situations are distinguishable. There is a distinction between civil and criminal cases, and between appearances in a civil court and detention on a criminal charge.

Organization also offers Award 6470, Second Division, to support Employees' claim. In that case, the employee was acquitted of all criminal charges; however, in the instant case, there was no acquittal, but Claimant was placed on a two year probationary term which withheld an adjudication of guilt pending completion of the probation. Probation is not an acquittal in the eyes of the law.

Claimant has placed himself in a position of being absent from service, but not unavoidably. He should be cognizant of and is liable for the consequences of violating the law. His conscious violation of the law does not constitute an unavoidable absence for good cause; violations of the law are presumed avoidable.

Claimant admitted to furnishing false information as to his reasons for absences on May 15-18. It was a reasonable fear that an admission of arrest might have jeopardized Claimant's employment status. While his apprehensions were understandable, his fabrications are not justifiable. Carrier has a right to expect truthful behavior from its employees in relation to work centered employee obligations such as those involving absences.

Rule 19, while not predicated upon the granting by Carrier of permission for absence, does require notification of the cause of the absence. This notification, when truthful, enables the Carrier to provide for an adequate and stable labor force in the event of prolonged absences. Therefore, Claimant's false information could have worked to seriously undermine Carrier's valid rights in maintaining a stable labor force.

The introduction of Claimant's prior record for review in the investigation, in conjunction with the facts attendant to the present record, was properly considered in arriving at the discipline to be imposed. Claimant's recent record from January 3, 1972 until May 12, 1972 shows three full days and twelve part-day absences, and his prior record shows a write-up for excessive absenteeism. The Carrier's right to have reliable employees is undisputed, and the false information, absence without good cause, and the prior unsatisfactory service of Claimant are properly contributory considerations in assessing degree of penalty.

We conclude from the record that the discipline of dismissal in the present case is neither arbitrary, capricious, excessive, nor an abuse of managerial discretion. Claimant has been shown to be an unreliable employee whose dismissal was justified.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By: *Rosemarie Brasch*

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November, 1973.