Form 2(a)

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

ORDER

To accompany { Award No. 6706
Docket No. 6503

Mr. R. E. Stenzinger, RR Coordinator
Intl. Assoc. of Machinists
Room 303
640 Pearson Street
Des Plaines, Illinois 60016

The Division, after consideration of the Docket identified above, hereby orders that an award favorable to the petitioner should not be made. The claim is denied as set forth in the Award, a copy of which is attached and made a part of this Order.

Executive Secretary
National Railroad Adjustment Board
By Order of Second Division

By Rosemarie Brasch
Rosemarie Brasch
Administrative Assistant

Mr. C. M. Crawford
Asst. to General Manager
Belt Railway Company of Chicago
6900 South Central Avenue
Chicago, Illinois 60638

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6706
Docket No. 6503
2-BRCofC-MA-'74

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

Parties to Dispute: (System Federation No. 6, Railway Employes' Department, A.F. of L. - C.I.O. (Machinists)
(Belt Railway Company of Chicago

Dispute: Claim of Employes:

1. That under the terms of the controlling Agreement Mr. Daniel M. Garza was unjustly dismissed from the service of the Belt Railway Company of Chicago at Chicago, Illinois, beginning February 5, 1972.

2. That, accordingly, the Carrier be ordered to compensate Mr. Garza for each day's pay lost because of such unjust dismissal, at eight hours' straight time rate of pay each day, such claim to continue until Mr. Garza is returned to service. Further, consider this a claim for Mr. Garza's seniority rights during the period of dismissal, plus all the overtime that Mr. Garza will be unjustly deprived of because of that dismissal, plus vacation rights that would accrue to Mr. Garza had he not been unjustly dismissed, plus the continuation of Mr. Garza's insurance benefits under Policy Contract GA-23000, plus any and all other benefits that would have accrued to him by virtue of his continued employment had he not been unjustly dismissed.

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 an employe of the Carrier from December 18, 1968 until February 4, 1972 when he was dismissed from service after an inves-

tigation for excessive absenteeism, late arrivals, and early departures. A letter addressed to him and dated January 27, 1972 reads as follows:

> "Please arrange to be in my office at 8:30 a.m., Friday, February 4, 1972, for investigation to determine your responsibility, if any, for your late arrivals or early departures from your work assignment and your constant and repeated absences from work, the last date absent being Janaury 26, 1972.
>
> "If you desire representation, please arrange."

At the investigation hearing, Employes protested that the notice of January 27, 1972 "was improper because of not clarifying the date or dates of Mr. Garza's alleged absences." Because of that, "Mr. Garza was in no position to be able to complete a record for his defense at this time." No request was made to postpone the investigation to give the Claimant and the Employes additional time to develop a defense.

Rule 20 provides that an employe called for an investigation "will be apprised of the 'precise' charge and given reasonable opportunity to secure the presence of necessary witnesses." How "precise" need the advice be? The letter of January 27, 1972 is a sufficient compliance with Rule 20. It advised the Claimant that the investigation will determine his responsibility, if any, for his "late arrivals," his "early departures," and for his "repeated absences from work, the last date being January 26, 1972." He knew very well whether or not he had been absent on January 26, 1972, and on prior dates. He had ample opportunity to secure witnesses and assemble other facts to either deny those absences or justify them for good and sufficient reasons. He requested information from the Carrier's records. He was not so naive and so surprised as Employes contend. It was not necessary under Rule 20 for the Carrier to list each date of absence, late arrival and early quits. All of the awards cited by the Employes, and there are many, are easily distinguished.

The record shows that the Claimant was absent 14 days in October 1971, 5 days in November 1971, 5 days in December 1971, and 4 days in January 1972. It also shows that he arrived late or departed early on 3 days in October 1971, 2 days in November 1971, 6 days in December 1971 and 4 days in January 1972. These are not disputed. It is true that Claimant's immediate supervisor gave him permission to be absent on some of those days, but "not on all of them." Yet, the essential evidence of frequent and repeated absences, tardiness, and early quits are not seriously questioned. His only excuse is that on "the days when I take off or days I go early is because I have something to take care, so I need to do myself." This is hardly a justifiable reason for frequent

and repeated absences, tardiness, and early quits.

Claimant was absent 28 days out of about 80 scheduled working days in less than four months, or about 35% of the time. That is excessive absenteeism under any acceptable definition. Even if he was excused on half of the days, his absence record of 17.5% is also excessive. There is no evidence that he was granted leaves of absence under Rule 28 for such 35% of his absences or for any appreciable percentage of the time. The burden of such proof is upon the Employes. It has not been met.

And it is not as if the Claimant was led to believe that his absences were condoned. He admitted that he was warned not to take more time off.

Having established that the Claimant was excessively absent from work, that he had a record of tardiness and early quits, it is quite proper for the Carrier to consider his work record before assessing a penalty. This record establishes without question that the Claimant had had a running poor attendance record for almost all of his term of employment. He was "dropped from rolls" on December 19, 1968 and reinstated; he was found reclining and not attending to his duties on February 12, 1970; he was issued a reprimand on April 14, 1970 after an investigation for repeated absences; he was issued two reprimands on April 27, 1970 for delaying a locomotive 40 minutes; a letter on March 22, 1971 admonished him for "poor attendance performance for the month of March 1971"; he was given two reprimands and a three-day suspension on June 15, 1971 after an investigation because of repeated absences, late arrivals, and early departures.

Employes argue that the Claimant's prior work record was never discussed on the property and so is improperly before this Board. At no time on the property did the Employes contend that the penalty was excessive. Their only position has consistently been that the Carrier violated Rule 20 by not giving the Claimant "precise" notice of the investigation and that Claimant's absences were excused under Rule 28. We have held that Rule 20 was not violated and that there is sufficient evidence in the record to justify a finding that the Claimant was excessively absent and tardy without any grants for leaves of absence under Rule 28.

For the reasons herein stated, the Board finds that the Carrier did not violate the Agreement and that the claim has no merit.

A W A R D

Claim denied.

Award No. 6706
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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 7th day of June, 1974.

LABOR MEMBERS' DISSENT TO AWARD NO. 6706,
DOCKET NO. 6503

The Referee in Award No. 6706, Docket No. 6503, along with the majority in this instant award, has completely departed from reason and precedent in this absurd interpretation of Rule 20, requiring a "precise" notice of investigation and proper or excused absences under Rule 28.

The record shows that Claimant was charged with:

> "* * * your late arrivals or early departures from work assignments and constant and repeated absences from work, the last date absent being January 26, 1972."

Such a shotgun charge is certainly not "precise" in accordance with precedent awards furnished this neutral and as required by Rule 20.

Furthermore, the charge was not even sustained on the one and only mentioned date of January 26, 1972. The record clearly shows that the Carrier's foreman, as their chief witness, stated that he couldn't remember any exact dates that claimant was off without permission, so this would include the only specified date of January 26, 1972 mentioned in the charge in an off-handed manner. This failure to prove a single specified date that claimant was off without permission is a blatant attempt to ignore and negate every provision of Rule 28 controlling excused absences.

The neutral then ignores proper protests that all rules of this Division were violated by the entrance of statements and records that were never advanced on the property. Not only should these belated entries, alleging prior bad work records, been stricken but also ignored until the instant charge was proven. Since this burden was not met, then any past record should not have been considered. On this issue the Employes cited Second Division Award No. 6215, rendered by this same neutral, reading in pertinent part:

> "It is a well established principle that an employe's work record may be considered in assessing a proper penalty, but only after the charge of the investigation has been fully and effectively sustained to justify a disciplinary penalty. Where the charge has not so been proven, the work record has no effect. In view of the fact that the Carrier has not proven the charge of an unauthorized absence on September 22, 1969 in violation of Rule 22, Claimant's otherwise poor absentee record may not be used to assess a valid disciplinary penalty.
>
> For these reasons, the Claimant was improperly discharged and the penalty was arbitrary, capricious and discriminatory."

For inexplicable reasons of his own, this neutral has now seemingly even ignored his own dictum on this issue.

For these reasons this award is in all respects erroneous, in contradiction to all rules, logic or precedent, and to which we register our dissent.

G. R. DeHague - Labor Member

E. J. McDermott - Labor Member

D. S. Anderson - Labor Member

W. O. Hearn - Labor Member

E. J. Haesaert - Labor Member