

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: { Howard Egleston, Petitioner
{
{ Pacific Fruit Express Company

Dispute: Claim of Employees:

That the petitioner in the above entitled matter became ill on February 2, 1972, and was under doctor's care and authorization to be off of work until February 11, 1972. Petitioner was released to return to work on February 14, 1972. On February 13, petitioner's father died and petitioner was given from the 14th of February to the 25th of February due to the death of his father. On February 28 and 29, petitioner was again ill and under a doctor's care. Petitioner reported to his company. Petitioner took March 1 and March 2 off due to personal business relating to the death of his father. On March 3, 1972, petitioner again advised respondent he would be off a few days to attend to personal business and his mother who had become seriously ill since the death of her husband. On March 9, 1972, petitioner received a letter to appear for hearing at the superintendent's office on March 15. At the hearing on March 15, respondent informed petitioner that he could keep his job if he would sign an undated resignation slip to be served upon him at the company's discretion. Petitioner refused to sign said resignation slip.

The aforementioned dismissal was without just cause. Said action by respondent was arbitrary and capricious and constituted abuse of discretion, since petitioner's actions were consistent with the collective bargaining agreement between The Pacific Fruit Company and The Brotherhood of Railway Carmen of America. This is to further advise that petitioner will seek reinstatement for the unjustified dismissal with full back pay and allowances.

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.

It is clear from the record that the claim the Petitioner is attempting to assert before this Board was not handled on the property in accordance with the provisions of the applicable collective bargaining Agreement and as required by Section 3, First (i) of the Railway Labor Act. Therefore, the claim is barred from consideration by the Division and will be dismissed. See, for example, Second Division Awards 6172, 6293, 6298 and 6436.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of December, 1975.