Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7473
SECOND DIVISION Docket No. 7287
2-CR-EW-'78

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

Parties to Dispute: (System Federation No. 100, Railway Employes' Department, A. F. of L. - C. I O. (Electrical Workers)
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That under the current agreement, Electrician Raymond Allen Liguori was unjustly dismissed from the service of the Erie Lackawanna Railway Company as result of a formal hearing held on November 6, 1974.

2. That accordingly the carrier be ordered to restore to the aforesaid employe all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate for each working day he has been improperly held from service; and all benefits due him under the group hospital and life insurance policies for the above mentioned period; and all railroad retirement benefits due him including unemployment and sickness benefits due him for the above described period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the above described period; and all other benefits that would normally accrue to him had he been working in the above described period in order to make him whole.

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.

This is a claim for the reinstatement of Raymond A. Liguori, who was dismissed from service in November 1974, following a hearing, for excessive absenteeism, tardiness and unauthorized absence from company property during working hours.

Claimant Liguori entered Carrier's service on January 8, 1971.

The record indicates a prior history of tardiness and absenteeism, and 60 days suspensions on two prior occasions for excessive absenteeism and tardiness. In the 7-month period immediately preceding Claimant's dismissal from service, the record shows that he was absent 20 days and late 32 days. On a previous occasion, when Claimant was counseled regarding his repeated absences, he was notified that a doctor's certificate was to be submitted when his absence or absences were due to illness. In the 7-month period referred to above, Claimant twice submitted a doctor's note.

At the formal investigation held on November 6, 1974--the third hearing since August 1972 for excessive absenteeism--Claimant admitted that he had left the Company property without permission.

Petitioner, in its Rebuttal to Carrier's Ex Parte Submission to this Board, maintains that Claimant's prior record is not part of the charges in the case before us. This prior record is significant and important. Carrier clearly has the right to consider an employee's past record in determining the extent of the discipline to be assessed. Petitioner did not dispute the record, but did challenge its relevancy.

The principle has been well established in prior decisions of this Board that in determining the degree of discipline, after a rule violation has been established, a Carrier may take account of an employee's entire service record. Not only is it proper to do so, but necessary on grounds of equity and justice. We hasten to add, in accord with well established authority and prior Board decisions, that an employee's past record may not be used against him in resolving the question of whether he is guilty of the offense charged, and on which the hearing or investigation is being held.

Petitioner's exception to Carrier's consideration of Claimant's prior record of absenteeism and tardiness was, as noted above, not voiced during consideration of the case on the property. Hence, it may not be considered by this Board.

The hearing record in this case substantiates both portions of the charge. No evidence was presented to indicate a recurring physical condition which might require absence.

The scope of our Board's review in a discipline case is well defined. As an appellate Board, we may not substitute our judgment for that of the Carrier or decide the case as we might have done were we to consider it de novo. We can only decide, from the record, whether there is substantial evidence to support the charge. If the record contains such substantial evidence, then the assessment of discipline rests in the Carrier's discretion and we are not authorized to disturb the penalty imposed unless it can be clearly shown that the Carrier's actions were unjust, unreasonable or arbitrary. These sound principles have been upheld by all Divisions of this Board, in awards too numerous to cite.

In the case before us, there is substantial evidence--including claimant's own admissions. No valid mitigating circumstances have been adduced which might have altered the decision to modify the severity of the discipline imposed. The prior instances of discipline for similar violations, so far as can be ascertained, did not improve Claimant's attendance or tardiness record. The discipline assessed in this case was not unjust, unreasonable or arbitrary. Hence, we must uphold Carrier's discipline.

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 24th day of February, 1978.