

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

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employee:

1. The Claimant, Clarence Rice, was alleged to have been delinquent in keeping up his apprenticeship training program lessons and was summoned to an investigation by letter dated May 29, 1975. The time was set for 10 A.M., Wednesday, June 4, 1975.
2. The charges against Carman Apprentice Clarence Rice, Memphis, Tennessee, were that he was currently delinquent eight lessons and was advised that four lessons delinquent would subject an apprentice to disciplinary action.
3. It is the desire of this employe to be reinstated with all rights unimpaired and paid for all time lost from the time that he was removed from service until he is restored to service, with six and one-half percent ($6\frac{1}{2}\%$) interest.

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 Clarence Rice, employed at Memphis, Tenn. as a Carman Apprentice on July 31, 1974, was dismissed from Carrier's service on June 18, 1975 for failure to complete written apprentice training lessons furnished by the Railway Education Bureau, following an investigation on June 14, 1975. Such failure was deemed by the Carrier to constitute negligence or indifference to duty, and thus rendered Claimant liable to dismissal under company regulations.

The record indicates that Claimant was advised by the Chief Mechanical Officer (Equipment) on March 17, 1975 that he was delinquent in completing four (4) lessons, and that he would be subject to discipline and/or removal from service if more than four lessons delinquent. Claimant acknowledged receipt of this letter on March 21.

The Claimant's foreman posted a notice on April 25, 1975 addressed to all carmen apprentices, calling their attention to the March 17 letter referred to above and reaffirming the possibility of discipline if they were more than four lessons delinquent. On that same date, April 25, Claimant's foreman wrote to Claimant that he was six lessons in arrears in his apprentice training program and that he was to report on his next rest day to the foreman's office and work on his lessons in the foreman's presence. On that same date (April 25), however, the foreman sent another letter to Claimant, stating that "the reason you have not received 4 apprentice lessons they failed to handle your change of address. You properly filled out required forms. Please disregard my letter to you dated 4-25-75 concerning your delinquent status. Your 4 lessons will be mailed to me and I will see you receive them promptly."

On May 29, Claimant was directed to appear at a hearing on June 14 on the grounds that he was 8 lessons delinquent.

At the hearing, Claimant's foreman stated that he had called the Railway Education Bureau on May 30, and was informed that Claimant was delinquent in completing 10 lessons, two of which had been mailed him on May 10. Claimant, also at the hearing, asserted that he had turned in lessons about three days before the May 29 letter directing him to appear at a hearing regarding his delinquency and that he brought in the letter to the foreman and was told "everything was all right."

Claimant was dismissed from service effective June 18, 1975 "in connection with your failure to properly complete the Railway Educational Bureau Apprentice Correspondence courses."

Following Claimant's dismissal on June 18, Carrier offered to reinstate him without pay on July 14, 1975, which offer he rejected. On October 28, 1976, reinstatement was again offered on a leniency basis with seniority and all the other rights unimpaired but without pay for time lost, and again declined.

During the hearing, Claimant stated that he had not been receiving the lessons because of a change of address. At the same time, he acknowledged that he was required to complete two lessons a month. Claimant had been advised, by letter dated March 17, that he was being sent two lessons a month; that he was required to keep current in completing such lessons; that keeping "current" required being no more than 4 lessons delinquent; and that he would be subject to discipline if more than four lessons delinquent.

Yet not until he received a letter from his foreman on April 25, advising him that he was six lessons delinquent, did he undertake to ascertain why he was not receiving any lessons. Claimant stated at the hearing that he had not received any lessons for about 4 months.

Claimant's personal record, introduced by the Carrier at the hearing without objection, refers to two letters written by Claimant's foreman early in 1975 concerning his delinquency in completing his lessons. These letters are dated prior to the time charges were filed leading to the formal hearing.

The hearing transcript also indicates that Claimant had been talked to previously about the importance of sending in his completed lessons promptly.

Claimant (and Petitioner) assert that Claimant could not complete his lessons on time because he did not receive them. In support, reference is made to the foreman's letter of April 25, 1975, which acknowledged that Claimant had executed the proper change of address forms but also that "they failed to handle your change of address." Petitioner concludes, therefore, that "Apparently the Railway Educational Bureau was at fault by virtue of not sending these lessons properly and timely."

Carrier states, however, that the Railway Educational Bureau had used and did in fact use Claimant's correct address. Carrier cites some lessons failed by Claimant in January 1975, which were returned to him, were reworked and returned by him to the Bureau, and credited to him in March. This, Carrier asserts, indicates the Bureau's use of the correct address.

Both sides thus make statements regarding Claimant's receipt of the lessons which are in conflict. The record provides no basis to permit the Board to resolve these conflicting contentions.

We are thus left with the critical issue as to whether Carrier's action in dismissing Claimant from service for delinquency in completing his written apprentice training lessons was arbitrary or capricious. The evidence is clear, and acknowledged by Petitioner, that Claimant was delinquent, and that he had previously been admonished and advised of potential discipline if he failed to submit his completed lessons on time. Claimant was aware of the fact that he was scheduled to receive two lessons a month to be worked on, and he so acknowledged at the hearing. He stated that he had not received any lessons for 4 months, but made no effort to find out why he was not receiving them.

Although we find that the evidence concerning Claimant's receipt of the lessons is in dispute, the evidence that Claimant was delinquent in his lessons is sufficient and credible and supports the charges as made. We cannot, therefore, in accordance with long-established principles of this Board, substitute our judgment for that of the Carrier. Awards upon this point are too numerous to mention. We have no choice but to deny the claim.

Form 1
Page 4

Award No. 7475
Docket No. 7302
2-SLSF-CM-'78

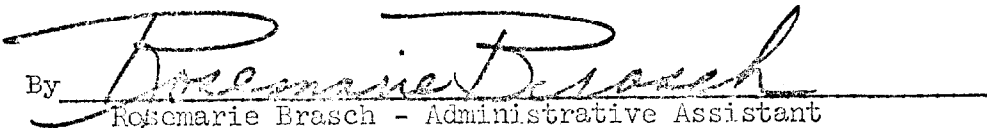
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1978.