

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C I. O.
((Boilermakers-Blacksmiths)
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(Chicago and Northwestern Transportation Company

Dispute: Claim of Employees:

1. That, in violation of the current agreements, Welder J. N. Sorenson was unjustly dealt with when on date of October 31, 1975, the Carrier assessed a dismissal from the service of the Carrier, effective November 7, 1975.
2. That, accordingly, the Carrier be ordered to return Mr. Sorenson to service immediately with:
 - (a) All seniority rights unimpaired.
 - (b) Compensation for all lost time at the prevailing rate of pay, plus 6% per day until date of payment.
 - (c) Make him whole for all vacation rights.
 - (d) Pay all premiums for hospital, surgical and medical benefits for all time held out of service.
 - (e) Pay the premiums for group life insurance for all time held out of service.
 - (f) Be allowed all other benefits that he would have been entitled to have had he not been taken out of 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 a track welder headquartered at Tracy, Minnesota. He has service of 27 years without disciplinary infractions on his record. He and his helper traveled to Watertown, South Dakota to perform welding work there and they spent September 29 and 30, 1975, at Watertown hotels at carrier's expense. When they ran out of acetylene at 8:00 a.m. on October 1, 1975 the Maintenance Foreman advised them to return to Tracy on orders of the Roadmaster because there was no further work for them at Watertown. They continued to work on chairs until 10:30 a.m. when they went to the hotel, gathered their possessions and departed for Tracy where they arrived at 2:00 p.m. The helper was dropped off at his home and claimant returned the truck to the depot and went home.

The claimant's assignment was to report at 7:30 a.m., take one-half hour for lunch from noon to 12:30 p.m. and work until 4:00 p.m. Claimant's time report for October 1, 1975 reflected he had worked until 4:00 p.m. when, in fact, he had not. The charge against him stated the investigation was to determine:

"your responsibility for in connection with absenting yourself from duty and falsifying report of time worked on October 1, 1975."

At the hearing claimant did not deny that he had left early on that date and he had not completed the full shift. The excuse he advanced was to the effect he was not paid overtime for the travel of approximately 120 miles and it was the practice of leaving early to accomplish this travel. He also contends such practice was known to carrier officials. This was denied but not with such emphasis that an objective review of the record will not raise questions concerning the vitality of such a practice.

To his credit, claimant was candid in admitting he had gone home early. Nevertheless, an employee of his long service must be charged with the questionable nature of such a practice. We conclude he was not able to sustain his burden of establishing the practice he advanced in his defense. We are not inclined to second guess the carrier when it reaches a conclusion in a disciplinary matter, particularly where there has been a full opportunity for a fair hearing and the position it adopts is supported by substantial evidence. In this instance, we might hope for more but it cannot be said the minimum requirement has not been met. It follows that we cannot assert with any confidence that there is a basis for overturning carrier's conclusion. We do hold the contract was not violated.

However, we believe the carrier went too far in its punishment in this case. Under the circumstances we believe the claimant has received sufficient punishment. We are mindful of carrier's right to make a total review of the employee's record when it assesses the penalty. We do not question that right. We are more inclined to question the values it

attaches to the matters outlined in the record in this connection. For instance, we will not take cognizance of the rumored alcoholism of claimant. No disciplinary action has been advanced against him and whether or not that is a root cause for the alleged absenteeism is speculative on this record. Moreover, his credit problems may be irrelevant unless it affected his employment relationship. As for his absenteeism, the allegations are extreme and if they are valid it raises questions why the carrier did not take appropriate disciplinary action long ago. Apparently, it did not and we do not believe it can advance such accusations effectively at this late date. For all these reasons we believe this employee should be restored to service, seniority unimpaired, without back pay. We would urge the carrier to further counsel this employee on his problems so he will be alert to the fact that further infractions may result in more severe punishment.

A W A R D

Claim sustained in accordance with the Findings.

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 14th day of April, 1978.