

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the controlling Agreement, Car Cleaner T. Keith, Jr. was arbitrarily and unjustly dismissed from service on March 12, 1976.
2. That accordingly, the Carrier be ordered to return Car Cleaner T. Keith, Jr. to service with pay for all time lost beginning March 13, 1976.
3. Further, that the Carrier be ordered to restore Car Cleaner T. Keith, Jr.'s seniority, vacation and sickness benefits; and that the Carrier be required to pay any and all bills that have developed for Hospital, Medical, Surgical and Doctor bills as a result of losing coverage under Health and Welfare Plans when improperly taken out of service. In addition, if this Carrier is granted the right to deduct any earnings in outside employment, they be required to make full payments to the Railroad Retirement Board for this period so that Mr. Keith, Jr. will continue his retirement credits and his unemployment and sickness benefits under this Act.

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.

The Claimant was assigned as a Car Cleaner at the Carrier's Harrison Yard facility and had been employed approximately 15 months at the time of the incidences cited as the basis for dismissal. During the period of

January 2 to February 26, 1976 the Claimant was absent on five days, late on eleven other days and left the job early on eight days. He was notified of a hearing and investigation on his absenteeism, lateness to work and going home early on March 9, 1976, which he attended.

The Claimant contended medical problems as the basis for his lost time, but offered no medical proof of such illness. The Organization cites Rule 33 --

"ABSENCE FROM WORK. In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness, or for any other good cause, shall notify his foreman as early as possible. Employes are expected to make advance arrangements if necessary to be absent, when known."

to counter the Carrier's charge that the Claimant was unreasonably and unjustifiably away from his job in violation of Rules 2 and 3. These Rules establish eight hours as a day's work and 40 hours consisting of five days of eight hours as a work week. While Rules 2 and 3 do not define precisely what an employee's obligation is to regular attendance and while Rule 33 does establish a basis for absence from work due to sickness or "any other good cause," it has long been a precept that reasonableness or the "rule of reason" can be applied where precision is otherwise lacking. In this case, it is patently unreasonable to assume that Rule 33 can be applied to absence from work for some period of time on 24 different circumstances in so short a period of time, without entitlement on management's part to require proper excuse. Otherwise, it would be impossible to sustain a viable work force. There is nothing in the record to indicate that the Claimant had prior discipline, for that reason, he will be afforded an opportunity to return to work without pay. It is suggested that the Claimant take this opportunity to prove himself a conscientious and dependable employee.

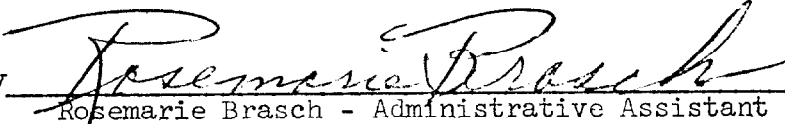
A W A R D

Claim sustained to the extent indicated in the Findings.

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 16th day of June, 1978.