

The Second Division consisted of the regular members and in addition Referee Irvin M. Fisherson when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'
Department, A. F. of L. - C. I. O.
(Gorman)
{ Alton and Southern Railway Company

Dispute: Claim of Employee:

1. That Gorman W. Torfent was unjustly treated by the Alton and Southern Railway Company when said Railroad dismissed him on April 13, 1946, prior to the formal investigation held April 21, 1946.
2. That, accordingly, the Alton and Southern Railway Company be ordered to reinstate this employee with seniority rights unimpaired and compensate him to Gorman's pre-discharge rate for all time lost, plus, six per cent (6%) interest for all wages deprived of. Also, fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and funeral insurance) deprived of from April 13, 1946 until return to 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 employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as amended 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 had been employed by Carrier for eight years. Claimant was charged with being absent from his assignment from January 17, 1946 through April 10, 1946 without permission and, upon an investigation, was dismissed from service.

Petitioner raised several procedural objections, principally that the charge had not been proven and further that Carrier would not prove Claimant's previous record during the hearing. That, based on well established procedure in a case of unfair discharge, it was held that the charge against Claimant was proven. Further, it was held that Carrier had

the right to place Claimant's prior record in evidence for the purpose of considering the quantum of discipline to be assessed; such evidence may be considered only if the instant charges are proved against Claimant. After the Organization objected to the introduction of the previous record, the hearing officer expressed his intention to review the record during the hearing. It should be made clear to the parties that this Board has held that it is not necessary to review an employee's previous record during a hearing; however there is no violation of the agreement, or prejudice to Claimant's rights, if the record is introduced for the limited purposes described above. In sum, we find that this case is free of prejudicial error.

With respect to the merits, we find that the evidence at the hearing was more than substantial to establish Claimant's absence from work for the period in question. The charges are proved and the Organization is entitled to a hearing which would mitigate its offense. Our minds have conclusively held to it is the employee's responsibility and burden to come forth with such evidence, if it exists, during the hearing.

With respect to the measure of discipline assessed, it came to Carrier's attention during the handling of this dispute on the grounds that Claimant suffered from alcoholism and that this was the present reason for his prolonged absence. The record also indicates that shortly before Claimant returned to work he had been in an Alcoholism Anonymous program, continues to participate in that program. In addition, Carrier indicated that the results of its initial counseling program designed to aid employees suffering from alcoholism were offered to Claimant. We recognize that Carrier's initial counseling program is totally informed of the its disciplinary procedure and the wishes of employer under labor contract. Furthermore, it is well known that individuals suffering from alcoholism must be motivated to help themselves in order to change their behavior. In this case Claimant did not advise that he had a problem and he took steps to correct it. For that reason we find that the discipline assessed can be considered fair; we will sustain the discipline assessed and we find that Claimant be reinstated to service with seniority being fixed but without pay for the last. In doing so, Claimant must be made aware that he has a contractual obligation to Carrier to perform service on all his assigned days and hours and if his behavior reveals to the previous pattern of alcoholism, which led to this discharge, Carrier will be holding him liable in permanently terminating his employment. We strongly suggest that Claimant continue with his rehabilitation program to avoid serious repercussions including the loss of his job.

AWARD

Claim sustained to the extent indicated in the findings above.

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Acad No. 7613
Policy No. 7770
2-27-64-173

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Board Division

Attends: Executive Secretary
National Railroad Adjustment Board

By _____
Attorney General - National Railroad Adjustment Board

Dated at Chicago, Illinois, this 14th day of July, 1978.