

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current agreement A. L. Vance, Laborer, was unjustly dismissed from the service of the Carrier effective June 7, 1976.
2. That accordingly the Carrier be ordered to reinstate this employee with seniority rights unimpaired, vacation rights unimpaired, made whole for all health and welfare rights including Railroad Retirement and unemployment insurance, and pay for all lost time retroactive to June 7, 1976.

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 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 therein.

Claimant was charged with being absent without permission between the hours of 11:00 P.M. and 7:00 A.M. on May 3, 1976.

Carrier avers that such absence reflects failure to comply with agreement Rule 23 which states:

RULE 23 - DETAINED FROM WORK

"An employee desiring to be absent from service must obtain permission from his foreman. In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

An investigation was held on May 11, 1976 pursuant to Agreement Rule 19 to determine the merits of the asserted charge and Carrier shortly thereafter notified Claimant by letter, dated June 7, 1976, that he was dismissed from service.

This Board has carefully reviewed the adjudicative decorum of the May 11, 1976 investigative proceeding to insure that Carrier complied with the letter and intent of Agreement Rule 19. We find nothing in the record to suggest that said hearing was improperly conducted.

Claimant had an obligation to comply with the requirements of Rule 23 and he didn't in this instance. We are mindful of the many times an unforeseen event precludes an employee from observing precise notification standards, but in this case we are not confronted with an analagous problem. We believe claimant could have complied with this rule.

Claimant had been given three (3) investigations in the past for similar type infractions and was clearly cognizant of the attendance imperatives. He did not choose to follow them.

We think that some form of discipline is required in this case, but not permanent dismissal. Claimant has suffered emotional and financial loss since his dismissal on June 7, 1976, which we must assume has been remedially beneficial. It is expected that he will have changed his ways. Claimant must understand, however, that this is his last chance and must prove that he can diligently adhere to the appropriate attendance rules and procedures.

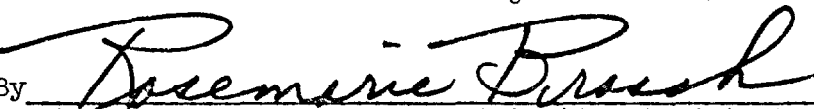
We will restore him to his position, but without compensation for lost service.

A W A R D

Claim sustained to the extent expressed in the opinion.

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 1st day of November, 1978.