

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(, Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Robert J. Fiorito was unjustly treated when he was dismissed from the service of the Carrier on March 1, 1977.
2. That, accordingly, the Carrier be ordered to reinstate Electrician Robert J. Fiorito to his former position with seniority rights unimpaired, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 6% annual interest on all such lost wages, also reimbursement for all losses sustained account loss of coverage of health and welfare and life insurance agreements during the time held 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 dismissed from service on March 1, 1977, following an investigative hearing concerning his absence without permission for five working days between January 7 and January 17, 1977. Review of the investigative hearing record shows that, by the employe's own testimony, the Carrier had good cause to find the Claimant improperly absent from work. The claim of inclement weather on four of the five days was judged to be insufficient reason by the Carrier, and the Board finds no basis to determine otherwise. In assessing the severity of the disciplinary penalty, Carrier considered the Claimant's work record, which shows two previous suspensions within the previous nine months for the same cause. There is no

basis for questioning the severity of the penalty by the Board under these circumstances.

The Organization raises two procedural points in its presentation to the Board. There is no direct evidence before the Board to show that these arguments were raised on the property, and on this basis they are inadmissible before the Board. Even assuming they were raised during the course of the dispute, however, the Board finds no merit in them.

The first point is that the Claimant did not receive a "fair and impartial trial" as required under Rule 6-A-1 (a), because the hearing officer, in the words of the Organization, "preferred the charges, weighed the evidence and then assessed the penalty of dismissal". The Board has found in many previous awards that such circumstances are not necessarily prejudicial to a fair and impartial trial. Examination of the records shows that the Claimant was given full opportunity to explain his conduct and that he was properly represented by the Organization. In defense of its position, the Organization cites Award No. 6795 (Rischen), which, in finding that the claimant was deprived of a fair hearing, stated in part:

"The Carrier supervisor who preferred the charges against claimant was the chief witness against claimant at the hearing, yet he also weighed the evidence and assessed the penalty of dismissal following the investigation..."
(Emphasis added)

In the present case, it cannot be said that the hearing officer was the "chief witness against claimant"; indeed, the facts were permitted to speak for themselves, with the Claimant offered full opportunity for rebuttal.

The Organization's second point is that the Claimant should be exonerated because he complied with Rule 22, which reads as follows:

"An employee unavoidably detained from work on account of illness or for other good and sufficient causes shall notify his foreman not later than the close of the first day of absence, if possible."

As explained in Award No. 7748 and in numerous previous awards, Rule 22 has specified purposes requiring absence reporting but does not, by itself, serve to condone absenteeism -- aggravated in this instance over a period of at least nine months. Further, Rule 22 refers to "good and sufficient causes" which were not found in this instance.

A W A R D


Claim denied.

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Award No. 7803
Docket No. 7616
2-CR-EW-'79

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 10th day of January, 1979.