

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. 6, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That as a result of an investigation held on April 13, 1976 Mr. J. L. Gilley was advised that he was dismissed from the service of the Elgin, Joliet & Eastern Railroad. Said dismissal is unfair, unjust, unreasonable, excessive, arbitrary, capricious and in violation of Rule 35.
2. That the Elgin, Joliet & Eastern Railroad, hereinafter referred to as the Carrier, be ordered to reinstate Mr. J. L. Gilley, hereinafter referred to as Claimant, with seniority, vacation and all other rights unimpaired, plus pay for all wage loss until returned 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 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 charged with the following specifications:

- "1. Your alleged ~~conduct~~ unbecoming of an employe of the EJ&E Railway Company when you were arrested by the Lockport Police Department on March 30 and 31, 1976.
2. Your alleged unauthorized absence from duty as a carman with the EJ&E Railway Company beginning Thursday, April 1, 1976, and including date of this letter." (April 7, 1976)

This provision states:

"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 within twenty-four hours. An employee who violates this rule may be dismissed."

His Uncle's notification on April 7, 1976 that he was off sick did not cure this violation. (See, for example, Second Division Awards 4689 and 6606). This offense, by itself, is sufficient to justify an unequivocal dismissal penalty.

Correlatively, while we recognize that the record doesn't show the adjudicative disposition of the criminal charges, we must, as a matter of our appellate responsibility note our concern with the manner carrier presented its case. We believe that additional eye-witnesses should have been called to testify on the fact specifics that led to the arrests on March 30 and 31, 1976. But this observation does not impair the results of the investigation. It is more an admonitory comment.

Accordingly, having thus found that the investigation was procedurally acceptable, we will not interpose our judgement regarding the appropriate penalty prescription, where the record shows that sufficient probative evidence was adduced to sustain the allegations. We will deny the claim.

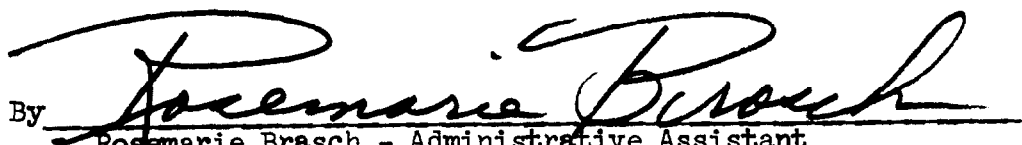
A W A R D

Claim denied.

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 14th day of February, 1979.


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1979. LABOR MEMBER'S DISSENT TO AWARD NO. 7842  
DOCKET NO. 7627

J. W. GOHMANN

The Majority in this dispute committed serious error in considering exhibits presented by the Carrier that were not made a part of the record of handling. Such consideration is in direct violation of Circular No. 1 and this fact was made well known to the Majority. Such acts cannot be tolerated.

The Majority condemns Carrier's actions time after time, i.e., failing to reschedule hearing upon request, and failure to produce eye-witnesses to testify, but the end result is condoned, resulting in Claimant's dismissal in flagrant disregard of rules of agreement and procedures of this Board.

  
C. E. Wheeler  
Labor Member