

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

Parties to Dispute: ( System Federation No. 21, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Southern Railway Company

Dispute: Claim of Employees:

1. That under the Agreement, Coach Cleaner M. C. Johnson, Atlanta, Georgia was improperly dismissed from service on June 15, 1976.
2. That accordingly, the Carrier be ordered to return Coach Cleaner M. C. Johnson to service with all rights unimpaired including losses sustained account of loss of coverage under health, welfare and life insurance and beginning June 15, 1976, he be paid for all time lost.

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 herein was dismissed from service on June 15, 1976 and was subsequently charged with "....the continued violation of Rule 30, paragraph B and being absent from your assigned duties without permission on 6-15-76." Following a formal investigation, the discharge was affirmed. Rule 30 provides:

"EMPLOYEES UNAVOIDABLY ABSENT"

Rule 30. (a) 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.

(b) The provisions of paragraph (a) shall be strictly complied with. Excessive absenteeism (except due to

"sickness under paragraph (a) above) and/or tardiness will not be tolerated and employees so charged shall be subject to the disciplinary procedures of Rule 34.

(c) An employee in service who fails to protect his assignment due to engaging in other employment shall be subject to dismissal."

The facts herein are not in dispute. On June 15, 1976 Claimant arrived at work one hour late. He was assigned to wash down the inside of a dining car. At approximately 11:00 A.M. Claimant could not be found in the area of his assignment; two supervisors looked for him but he was not seen until he entered the lunch room at about 11:40 A.M. Later that same day, at about 2:00 P.M. Claimant was again away from his assignment. After a search he was found in an abandoned dining car in which the doors had been locked and the window shades pulled. Following this incident, Carrier's supervisor, the Equipment Inspector, determined that he was in violation of Rule 30 (b) and terminated Claimant. The rationale was the history of absenteeism and tardiness together with the incidents of June 15th.

Petitioner argues that Claimant was not dismissed for good and sufficient cause. Even though Claimant had been absent on many occasions it is contended that he was off in each instance for good cause: he had family problems and had difficulties relating to child care while he was at work; he had been ill. It is urged that his absences were not unavoidable and that he notified his foreman when he was unavoidably kept from work. The Organization argues, as did the local Chairlady at the investigation, that even if Claimant was guilty, the penalty of dismissal was too severe.

Carrier points out that Claimant had worked for Carrier for only  $2\frac{1}{2}$  years and had devastatingly poor record of attendance. Carrier's witness at the investigation testified that Claimant had not had a full pay period, devoid of absence, since January 1, 1975. He had been given numerous warnings to improve his attendance, according to his foreman. He was also regularly tardy, according to Carrier. Claimant's discipline record was taken into consideration by Carrier in the assessment of the penalty. That record indicated that he had been previously disciplined as follows:

May 5, 1975 - Suspended one day for reporting late.

July 28, 1975 - Suspended for three days for failure to protect assignment.

November 26, 1975 - Suspended for ten days for excessive absenteeism and continued excessive tardiness.

January 29, 1976 - Suspended ten days for excessive absenteeism and continued excessive tardiness.

Carrier concluded that the flagrant actions of Claimant on June 15 1976 together with his past record were sufficient grounds to warrant dismissal.

Claimant presented no explanation for his conduct on June 15th. His only significant defense was his explanation for absence based on his family problems and the fact that he had notified the foreman each time he was absent or tardy. He offered no evidence to support his claim that he had been ill, thus explaining some of his absences. Furthermore, the general problem facing Claimant, assuming its validity, does not constitute "good cause" on a continuing and frequent basis. An employee has an obligation to report to work regularly and on time, regardless of his personal problems; this a fundamental aspect of the employment relationship. No company, much less a railroad, can function effectively if it tolerates erratic attendance. Carrier cannot be criticized for attempting to take firm measures to deter excessive absenteeism and tardiness (see 2nd Division, NRAB Awards 6710, 6240, 6285 among others). In view of Claimant's improper conduct on June 15, 1976 and in the light of his past record and many warnings, Carrier's disciplinary decision was clearly within its prerogatives and must not be disturbed.


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 21st day of February, 1979.