

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, Student Mechanic A. R. Warner, Danville, Kentucky, was unjustly dismissed from service by letter dated September 3, 1976 as a result of investigation held on August 30, 1976.
2. That accordingly the Carrier be ordered to restore Student Mechanic A. R. Warner to service with seniority and vacation rights unimpaired, he be made whole for Health and Welfare and Life Insurance benefits and he be compensated for all time lost betinning on the date he reports for work.

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 by letter dated September 3, 1976 after an investigation, having been found guilty of failure to protect his assignment. The facts, which are undisputed, indicate that Claimant last worked on June 19, 1976. On June 23rd a woman called in and indicated that he would not be at work, giving no explanation for the absence. This was the last anyone, Carrier or the Organization, heard from Claimant. Carrier made several attempts to locate Claimant by phone and by registered mail, to no avail. He was not present at the formal investigation, which had been postponed at the request of the Organization. The investigation was held on August 30, 1976.

Petitioner raised two issues relating to procedure: the lack of specificity in the charges against Claimant, in that no dates were indicated; and the multiplicity of roles of the hearing officer. This Board is precluded from considering either of these issues since neither one was raised on the property. It is well established by Boards in this industry and the NRAB that issues which are not raised during the handling of disputes on the property may not be raised initially before these Boards, which are solely appellate in function.

The substantive questions in this dispute come down to whether Carrier has the right to dismiss an employee who has disappeared and further whether Rule 34 requires a preliminary investigation in all cases. With respect to the requirement that there be a preliminary investigation, a rigid adherence to that rule would permit employees to avoid the disciplinary process by purposefully absenting themselves. Such a practice would obviously be contrary to the intent of the parties as expressed by Rule 34 as a whole.

Concerning the question of the discipline imposed, there is no question but that Claimant was guilty of the charge of failing to protect his assignment; in fact he still remained in an "A.W.O.L." status over a year later. There certainly was sufficient cause for the discipline imposed and Carrier's action may not be considered arbitrary, capricious or unreasonable.

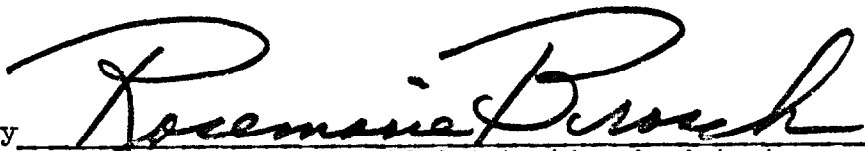
A W A R D

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.