

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

Parties to Dispute: ( Railway Employees' Department, A. F. of L. -  
 ( C. I. O. (Carmen)  
 ( Pacific Fruit Express Company

Dispute: Claim of Employee:

1. That the Pacific Fruit Express Company violated the controlling agreement, particularly Rule 37(a), when they unjustly dismissed Carman Claude Emerson from service June 1, 1977 following a hearing held May 25, 1977.
2. That accordingly, the Pacific Fruit Express Company be ordered to reinstate the Claimant to service, with back pay for all time lost from April 4, 1977 until reinstated, and with medical, dental insurance, seniority, etc., intact, as well as Railroad Retirement benefits brought to date, and be made whole in all respects.

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 charged with violating General Rules E and K which are quoted in pertinent part hereinafter:

Rule E "Employes who are ... immoral ... will not be retained in service."

Rule K "Those wishing to absent themselves from duty must first obtain approval of their supervisors; those unable to report for duty must promptly inform their supervisor and report the circumstances, failure to so handle without giving a satisfactory explanation cannot be permitted..."

An investigative hearing was held on May 25, 1977 pursuant to Agreement Rule 37 wherein Claimant was found guilty of the charges and subsequently dismissed from service, effective June 1, 1977.

Accordingly, consistent with our appellate responsibility, we thoroughly reviewed the transcript and documentary submission to determine whether Claimant was provided a fair and impartial hearing. We do not find after this examination, that the proceeding was partial or biased. Instead we find that the investigative record solidly substantiates the critical specifications, namely, that the claimant displayed a total, if not wanton, disregard for his work and committed a criminal act that is unequivocally apposite the intent and purpose of Rule E.

Claimant was arrested and convicted of violation Sec. 288 of the California Penal Code (lewd and lascivious act upon children under 14), which prevented him from reporting to work. He admitted that he did not protect his assignment, but offered no explanation why he was absent.

This Board has long held that imprisonment in itself does not constitute an unavoidable absence. Our case law is legion on this point. (See for example, Second Division Award 7067.) Claimant was responsible for meeting his employment obligations and he did not do so. His absences were the direct result of his criminal transgressions, not the decisional whims of the employer.

Carrier is legislatively vested with a special public interest that far transcends the bounds of most employment relationships.

The safe and orderly administration of a railroad demands, at a minimum, the procurement and retention of employees with unquestioned moral turpitude. Claimant's behavior and employment indifferent admittedly did not comport with this high standard or the specific rules promulgated to enforce it. It is in essence deportment that cannot be countenanced. Accordingly we not no recourse under the particular facts and developments of this case, other than to sustain the dismissal penalty.

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 28th day of March, 1979.