

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

Parties to Dispute: (System Federation No. 91, Railway Employees'
 (Department, A. F. of L. - C. I. O.
 ((Firemen & Oilers)
 (Louisville and Nashville Railroad Company

Dispute: Claim of Employee:

1. That under the Current and Controlling Agreement, Service Attendant B. L. Foley was unjustly dismissed from the service of the L&N Railroad Company on January 3, 1977, after a formal investigation was held in the office of Mr. R. L. Spain, Staff Assistant to Manager on Dec. 9, 1976.
2. That accordingly, B. L. Foley, Service Attendant, be restored to his regular assignment at South Louisville Shops with all seniority rights unimpaired, vacation, Health and Welfare, hospital and Life insurance be paid and compensated for all lost time, effective Jan. 4, 1977.

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 January 3, 1977 following a formal hearing held on December 9, 1976.

Claimant was charged with being absent from duty without permission from proper authority during the following three time intervals: October 12, 1976 through October 17, 1976; October 26, 1976 through November 10, 1976; and November 13, 1976 through December 1, 1976, on which date Carrier notified Claimant by certified letter of the charge against him and of the investigatory hearing scheduled for December 9, 1976. As the Claimant did not report to work after December 1, 1976 nor prior to the hearing date, the latter time interval was modified at the hearing extending the time period to include the date of December 9, 1976.

1

1

1

The Organization contends that Claimant complied with Rule 22 of the Current Controlling Agreement the subject of which deals with Absence Account Sickness and reads as follows:

"An employee detained from work account of sickness or other good cause shall notify his foreman as early as possible."

The Board notes from the record that notification of the first absence was given on October 21, 1976, a full ten days after the Claimant's last full day worked (October 11, 1976), and that of those ten intervening days only four were covered by a medical excuse. The second notification occurred twenty days following the first notification when, on November 10, 1976, the Claimant physically presented himself at his work station with a note from his personal physician stating the Claimant had had the flu and had been under physician's care since October 18, 1976 and was ready to return to work on October 25, 1976. The Board notes that sixteen days had elapsed between the time Claimant had been declared able to return to work by his own personal physician and the date Claimant reported to work. Claimant then notified his section manager by telephone on both November 11 and November 12, 1976 regarding his being detained from work. Therefore, between Claimant's last official notification on November 12, 1976 and the date Claimant presented himself at the scheduled hearing on December 9, 1976, another twenty-seven days had elapsed.

Based on the facts set forth above, the Board believes that to accept the view Claimant complied with Rule 22 of the Controlling Agreement, would be to stretch beyond reason the meaning and intent of the Rule. The Board notes that the Claimant himself does not deny but, in fact, admits that he did not have permission to be off of work during the aforementioned time periods and that he was not sick for the entire time he was absent from work. It is the observation of this Board that the investigatory hearing of December 9, 1976, was both fair and impartial and that the evidence derived from the hearing was substantial and convincing enough so as to render a denial of the instant claim.

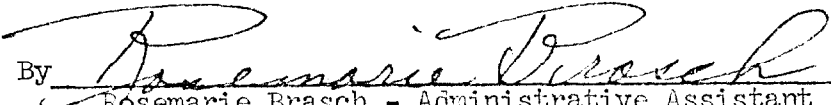
A W A R D

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 16th day of May, 1979.

