

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. 2, Railway Employees'
 (Department, A. F. of L. - C. I. O.
 ((Firemen & Oilers)
 (Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the controlling agreement Laborer, D. P. Barnes, was unjustly dismissed from the service of the Carrier on September 8, 1975.
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, D. P. Barnes, at the pro rata rate of pay for each work day beginning September 8, 1975, until he is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, D. P. Barnes, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Barnes an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 of the Carrier effective September 8, 1975 following a formal investigation conducted September 3, 1975, whereupon Claimant was found guilty of falsifying his time card on date of August 21, 1975.

On August 21, 1975, Claimant reported for work at 8:00 AM, one hour later than his regularly scheduled starting time of 7:00 AM. At the end of his shift at 3:00 PM on August 21, 1975, Claimant filled out and turned in his

time card (Form 25300) reporting he had commenced work at 7:00 AM, the starting time of his shift, rather than 8:00 AM, his actual starting time that day. Claimant's misreporting on his time card on date of August 21, 1975 was brought to the attention of Carrier's supervision on August 22, 1975 by an employee charged with the responsibility of keeping and checking time records. Immediately thereafter, Claimant was cited for a formal disciplinary investigation in which Carrier notified Claimant he was charged with having falsified his time card on August 21, 1975 and that at the investigation there would be a review of his attendance and personal record file.

The Organization acknowledges that Claimant's time record for August 21, 1975 was in error, but takes the position that Claimant, rather than deliberately or intentionally falsifying his time, did inadvertently and by mere mistake enter eight (8) hours worked rather than seven (7) hours. The Organization argues that Claimant did not lie about the time shown nor did he tamper or alter the time shown and therefore, the Organization asserts, Claimant is not guilty of falsification of his time card as so charged by the Carrier. In response to Carrier's submission of evidence at the investigation regarding Claimant's past record of absences, leaves and tardiness, the Organization maintains Claimant's reasons for such absences, leaves and tardiness must have been legitimate and acceptable to Carrier, arguing that otherwise, Claimant would not have been employed for the total of five and one-half ($5\frac{1}{2}$) years he worked for the Carrier. Furthermore, the Organization maintains, that over the years Claimant was employed by the Carrier, his work record actually improved. In addition, the Organization contends, Claimant did not receive a fair and impartial hearing.

The Carrier asserts that in addition to the instant claim being procedurally defective, said claim is totally without merit. Carrier argues that Form 25300 (the time card), requires the making of very deliberate entries in three places, for specifying time actually worked. Carrier's position is, that because the entries are so deliberate, Claimant did not inadvertently make a mistake as the Organization contends, but, did in fact, deliberately and intentionally falsify his time worked on date of August 21, 1975. Carrier further argues, that falsification by Claimant of his time record is such a serious offense, that by itself, such action warrants Claimant's dismissal. Even if this were not the case, Carrier states that Claimant's action of falsifying his time card coupled with his past dismal work record, combines to present a picture of an employee who did not at all care about his job and that under these circumstances, dismissal was neither excessive, arbitrary, capricious nor discriminatory. As to the Organization's contention that Claimant's work record actually showed an improvement over the years, the Carrier refutes this position by noting that in the ten (10) months just prior to his dismissal (between November, 1974 and September, 1975), Claimant had been absent or tardy or had left work early on more than fifty (50) occasions. Finally, Carrier refutes the notion advanced by the Organization that Claimant did not secure a fair and impartial hearing. Carrier asserts that it complied with all contractual guarantees granted the Claimant under the controlling agreement dated June 1, 1960 with regard to Claimant's right to a fair and impartial hearing.

It is the opinion of this Board, upon examination of the record, that the Claimant did, in fact, receive a fair and impartial hearing. Furthermore, we believe the evidence in the record supports, in a substantial manner, the finding of Claimant's guilt in connection with falsifying his time card on date of August 21, 1975. It is apparent from the record that tardiness, as well as absenteeism, had become a way of working life for the Claimant, and as such, it is difficult for this Board to conclude that Claimant was not cognizant of the fact that he had worked less than the eight hours he reported he worked on his time card on date of August 21, 1975. This Board believes that falsification of time records is a very serious offense, which under certain circumstances, such as those before us now, would by itself justify a disciplinary assessment of dismissal. The Claimant's poor work record over the entire time of five and one-half ($5\frac{1}{2}$) years employed with the Carrier only serves as an additional factor warranting Claimant's dismissal. There being nothing in the record indicating Carrier's action as being either arbitrary, capricious or discriminatory, we rule the instant claim must be denied.

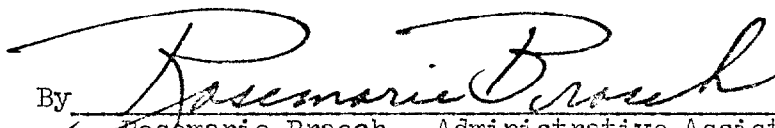
A W A R D

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 13th day of June, 1979.