Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8059
SECOND DIVISION Docket No. 7945
2-KCS-FO-'79

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

Parties to Dispute: (System Federation No. 3, Railway Employes' Department, A. F. of L. - C. I. O. (Firemen & Oilers)
(Kansas City Southern Railway Company

Dispute: Claim of Employes:

1. Under current agreement, Firemen & Oiler Mr. Harrison Parker, Jr. in Car Department for the Kansas City Southern Railroad Co. in New Orleans, Louisiana was unjustly dismissed from Carrier service on date of Friday, August 5, 1977.

2. That accordingly, Firemen & Oiler Mr. Harrison Parker, Jr., be made whole, restored to Carrier service with all seniority rights, vacation rights, Holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all wages lost from date dismissed, August 5, 1977 plus 6% annual interest on all such lost wages, also reimbursement for all losses sustained account of loss of coverage under Health, Welfare and Life Insurance Agreement during the time held out of service.

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, effective August 5, 1977, following an investigative hearing held on August 3, 1977 to determine his responsibility in connection with his absences from work on July 1, July 6, July 7 and July 8, 1977.

This disposition was appealed on the property and is presently before us for review.

Claimant contends that he tried to contact his foreman several times to apprise him of his physical condition, but was unable to reach him. He

does not remember how many calls were actually made, since members of his family placed the calls, but avers that he complied with Section 18 of the current agreement. This provision states that, "An employee desiring to remain away from the service must obtain permission from his foreman to do so; but if sickness or other unavoidable cause prevents him from reporting at his regular post of duty he must notify the Foreman as promptly as possible."

Carrier, contrawise, argues that claimant did not notify his foreman pursuant to Agreement requirements or follow alternative notification procedures. It asserts that he violated Section 18.

In reviewing this case, we recognize the conflicting arguments surrounding the disciplinary specifications, but believe that sufficient probative evidence was presented to substantiate the charges.

Claimant was under a more compelling obligation to notify his foreman, particularly in view of his prior commitment to observe scrupulously pertinent attendance rules and regulations. The record does not show that he met this crucial litmus test.

As to the corallary question of the improper use of his employment record, we do not find that it was used in proving the charges set forth in the July 12, 1977 disciplinary notice. The August 5, 1977 dismissal letter and the investigative transcript do not refer to his employment record.

Carrier is not barred from considering an employe's service record when assessing a disciplinary penalty, especially, when as here, an asserted infraction has been definitively proven. In Second Division Award 7473, we held that "The principle has been well established in prior decisions of this Board that in determining the degree of discipline, after a rule violation has been established, a carrier may take account of an employee's entire service record." This decisional principle is on point with the facts herein.

Based on the foregoing analysis and discussion, we must deny the 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of August, 1979.