

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: ( System Federation No. 4, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That carman-tentative, Amos Bostic was discriminated against account being unjustly dismissed from service as result of investigation held in the office of the General Car Foreman, Walbridge, Ohio at 9:00 a.m., Wednesday, February 9, 1977.
2. Accordingly, Bostic is entitled to be reinstated and to be reimbursed for all back wages lost from the date of February 18, 1977 until final settlement of the case is reached.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 on April 18, 1977, following investigation held February 9, 1977, on the charge of excessive absenteeism and tardiness.

Petitioner contests the dismissal on the grounds that Carrier's action was arbitrary, capricious, unjust, and "far too severe". In support, Petitioner cites Rule 37 (Discipline and Investigation Rule) and the multiple roles of the General Foreman in that he notified Claimant of the charges, conducted the investigation and assessed the discipline, hence denying Claimant due process.

A reading of the record discloses no violation of Rule 37 nor of Claimant's due process rights in that no bias was evident in the hearing officer's conduct of the investigation.

The record before us also indicates that Claimant's attendance and tardiness record was less than satisfactory. During the period cited in the letter of charges, from December 13, 1976 through February 3, 1977, encompassing 47 work days, Claimant was on vacation for 10 days. He was absent 23 days of the remaining 37 days during that period.

Claimant was represented at the investigation by the Organization's Local Chairman and Local Vice Chairman, but he did not show up for the hearing. Claimant had been arrested on the job on January 6, 1977, after reporting for duty one hour late that day.

Claimant's representatives stated at the hearing that they had received no word from Claimant. They acknowledged that Claimant's attendance record was poor and that the investigation had been fairly and impartially held. Neither Claimant nor his representatives requested a postponement of the hearing.

The record also discloses that Claimant had previously been disciplined for excessive absenteeism and excessive tardiness. Petitioner has not, on the record before us, denied that Claimant was guilty of the charge as filed. Accordingly, based on the uncontroverted evidence before us, we will deny the claim.

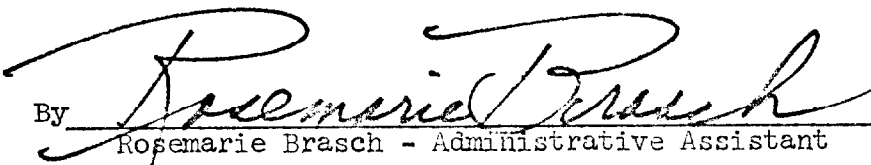
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.