

The Second Division consisted of the regular members and in addition Referee Richard R. Kashex when award was rendered.

Parties to Dispute: ( System Federation No. 76, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Cleaner Darrell Robinson was unjustly assessed 30 days suspension and was made to serve an additional fifteen days suspension which had been previously deferred, on March 13, 1978.
2. Coach Cleaner Darrell Robinson was erroneously charged with habitually and excessively poor attendance, due to his absences on February 7, 8, 9, and 10, 1978, and his tardiness on February 14, 1978.
3. That the Chicago and North Western Transportation Company be ordered to compensate Coach Cleaner Darrell Robinson for all time lost plus 6% annual interest; make him whole for all vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment, in accordance with Rule 35.

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.

The Claimant is employed as a coach cleaner at the Carrier's California Avenue Coach Yard in Chicago. On the dates of February 7, 8, and 9, 1978 the Claimant phoned the Carrier's office to advise that he was sick and could not work. On February 10, 1978 the Claimant's wife notified the Carrier that the Claimant would be late and she was advised, in return, that if the Claimant was going to be more than one hour late he should not bother to report for work. On February 14, 1978 Claimant appeared one hour and fifteen minutes after the beginning of his assignment. No call was made to the Carrier's office on the date of February 14, 1978.

By letter dated February 22, 1978 the Carrier charged the Claimant with responsibility for habitual and excessive poor attendance. The charge stated "your attendance became excessively poor when you were again absent on February 7, 1978; again absent on February 8, 1978; again absent on February 9, 1978; again absent on February 10, 1978; again late one hour and fifteen minutes on February 14, 1978." The investigation was held and the Claimant was found guilty of the charges and was assessed a thirty day suspension as well as an additional fifteen day suspension which had been previously deferred. The discipline was appealed and comes to this Board having been properly progressed through the required steps of the grievance procedure.

It is the position of the Organization that the charges placed against the Claimant were both false and unproven and that the Claimant was deprived of fair and impartial investigation. It is contended by the Organization that the Carrier improperly considered Claimant's past record in handling the case on the property. It is the Organization's position that the Carrier is not privileged to consider the Claimant's past record in this case since it failed to prove Claimant guilty of the charge placed against him. Finally, it is the position of the Organization that the Carrier relied solely upon the Claimant's past record in its unjustified determination of guilt.

It is the Carrier's position that the Claimant's attendance record became excessively poor when he absented himself on the dates listed in the charge. The Carrier contends that there is no dispute in facts regarding the Claimant's absence on the days in question and, therefore, the only matter to be decided is whether the Carrier assessed excessive or unduly harsh discipline.

In this case the question of the Claimant's prior record of attendance is intimately intertwined with the question of his absence from work on the four days in question and his lateness on the fifth day. This is so because of the nature of the charge. In reviewing the charge we find that the Carrier sought to determine Claimant's responsibility for habitual and excessive absence. The Carrier's concern about habitual and excessive absence was motivated by the absences and the lateness on the days in question.

Therefore, we find that the question of the Claimant's prior absence record would have been properly considered during the investigation and the handling of this case on the property.

Thus, when during the course of the investigation the Claimant's representative stated "I am not interested in habitually and excessive. . .", and the investigating officer responded "I am", the issue was properly drawn. However, a thorough reading of the record before us, including the full text of the investigation transcript, does not indicate that the charge of excessive or habitual absence was addressed. The only matters addressed concern the procedures for "calling in" in cases of sickness or lateness, as those procedures related to the five dates in question.

Therefore, it is not appropriate or necessary for this Board to consider the reasons for the absences on the four days in question or the lateness on the one day in question. Nor is it necessary for us in reaching a decision in this case to consider the Organization's contention that the investigation was conducted unfairly and in a prejudicial manner. For, as discussed above, the Carrier failed at the on the property handling level to establish evidence regarding the excessiveness of the Claimant's absences. That was the purpose of the investigation and in that purpose the Carrier failed to prove its case.

It is true that the Carrier incorporates the Claimant's prior attendance record in its submission and lists the absences, latenesses and early quits by month and year for our consideration. However, this evidence should have been properly raised during the investigation of the charge of excessive absenteeism. We as an appellate body are constrained from examining it here for the first time.

A W A R D

Claim sustained, but not to include six percent annual interest for all time lost.

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 November, 1979.