

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8204
Docket No. 8200
2-CR-FO-'79

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, AFL-CIO (Firemen & Oilers)
 { Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That under the current and controlling agreement, Firemen & Oiler William L. Burns, Consolidated Rail Corporation, Cos Cob Power Plant, Cos Cob, Connecticut, was unjustly suspended from service of the Consolidated Rail Corporation on December 5, 1977, and after a formal investigation was held in the office of Chief Engineer, Cos Cob Power Plant, by A. H. Fultz, General Foreman, on December 15, 1977, was subsequently dismissed from service on December 22, 1977.
2. That, accordingly, Firemen & Oiler William L. Burns be restored to his assignment at Cos Cob Power Plant, Cos Cob, Connecticut, with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance paid, and compensated for all lost time, effective December 5, 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 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 is a Coal and Ash Man with working hours of 3 p.m. to 11 p.m. His duties at the Carrier's Cos Cob, Conn., facility include operating coal conveyors to move coal, unloading coal cars, and emptying ash hoppers or ash pits.

Claimant was suspended from service on December 8, 1977, and given notice of investigative hearing on the following charges:

- "1. Failure to follow instructions of Supervisor to remain on assignment on December 3, 1977 and December 5, 1977.
2. Leaving assignment without being properly relieved and without authority at 1:30 p.m. December 3, 1977 and 10:25 p.m. December 5, 1977."

Following the investigative hearing, Claimant was dismissed from service.

The Carrier argues that the claim should be dismissed since its form as submitted to the Board (claiming simply unjust dismissal) is substantially different from that in the Organization's submission (which seeks restoration of benefits and compensation for all time lost). While this discrepancy is properly noted, the Board will nevertheless resolve the claim on its merits, since the progression of the dispute on the property leaves little doubt as to the remedy sought by the Organization.

The Organization argues, preliminary to its major defense, that the Claimant was improperly withheld from service effective December 8, 1977 until the date of his final dismissal from service.

Rule 20 - Discipline, reads in part:

- "(b) When a major offense has been committed an employee suspected by the Company to be guilty thereof may be held out of service pending trial and decision."

Given the circumstances, to be discussed below, the Board finds that the Carrier did not err in determining that a "major" offense had been committed.

The Organization also took issue with the conduct of the investigative hearing by the Hearing Officer. A review of the record does not substantiate this claim. The Organization was not denied the right to present witnesses, and any limitations on the line of questioning pursued by the Organization's representative did not interfere with a full and fair defense of the Claimant.

On the record, the Board finds that the Claimant requested permission to leave early on December 3, and such permission was denied. He left a half-hour early anyway. Although he claimed that he had been relieved, no probative evidence of such relief was produced.

As to December 5, Claimant denies that he left early. The Carrier's records and testimony show convincingly to the contrary. Further, the Claimant's supervisor testified that Claimant had requested permission to leave early and that this request had been denied.

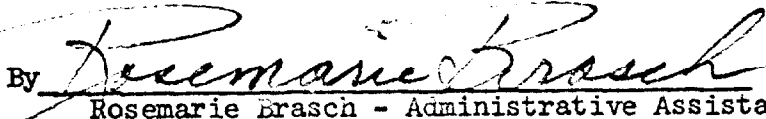
The Board finds no flaw in the Carrier's conclusion that the Claimant had left his assigned work early in the face of proper supervisory orders to the contrary. These offenses are serious and go well beyond simple absence from work. The Board concludes, however, that the penalty of dismissal from service is excessive and finds a lesser penalty to be appropriate. The resulting extensive suspension from duty nevertheless stands as a serious disciplinary action on the Claimant's record.

A W A R D

Claim sustained to the extent that the dismissal is found to be excessive. Claimant shall be offered reinstatement with seniority and other benefits unimpaired, but with no pay for the time out of service.

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 12th day of December 1979.