

of due process principles and thereby prejudicial to Claimant's rights. Upon a thorough review and examination of the record, we conclude that none of these technicalities either separately or when taken in combination with one another prevented Claimant from receiving a fair and impartial investigatory hearing.

As to the merits of the instant case, we find the record contains overwhelming and substantial evidence supportive of Carrier's position regarding Claimant's poor record of attendance. The record reveals that in the six (6) month period, November 21, 1976 through May 25, 1977, here under consideration, Claimant was absent from work a total of forty-four (44) full work days and eight (8) part days out of a total of 128 work days. Based on these statistics, Claimant incurred an absenteeism rate of thirty-six (36%) percent. However, of the forty-four (44) full work days missed, Claimant was able to account for twenty-eight (28) days due to dental problems for which Claimant obtained two (2) medical releases from his dentist. These medical releases covered the respective periods of March 23, 1977 through April 1, 1977, and April 4, 1977 through April 15, 1977. The remainder of this twenty-eight (28) day period was devoted to a physical examination of Claimant by Carrier's physician for the purpose of ascertaining Claimant's fitness to return to work. Subtracting out these twenty-eight (28) days from the total of forty-four (44) full days missed during the six (6) month period, leaves a balance of sixteen (16) days absent from work for which Claimant is unable to provide any sufficient or acceptable excuse. On the basis of these unexcused absences, Claimant incurred an absenteeism rate of eighteen (18%) percent. Upon his return to work on May 2, 1977 and through May 25, 1977, Claimant could have worked a total of eighteen (18) days but missed seven (7) of those days, thus incurring an absenteeism rate for this period of thirty-nine (39%) percent.

This attendance record would be bad enough on its own, but the evidentiary record reflects that Claimant was subjected to two (2) previous investigations, one in June of 1975, and one in December of 1976, both as a result of excessive absenteeism and tardiness and for which Claimant received deferred suspensions of ten (10) and thirty (30) days respectively.

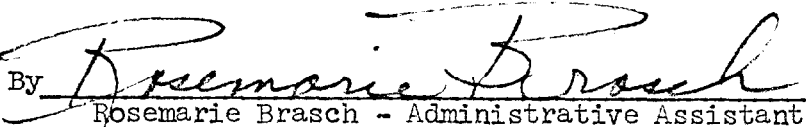
Testimony in the record has shown that over the years, Claimant has been counselled on numerous occasions about and progressively disciplined for his poor record of attendance. Such warnings have obviously gone unheeded by the Claimant. Previous decisions of our Board have held that the employment relationship demands that an employee fulfill the job and assignment for which he was employed and furthermore, that an employer does not have to retain in its employ any worker who is unwilling to fulfill his obligation. We find, in the instant case, Claimant's continual and persistent poor attendance wholly unacceptable and unsatisfactory. As there is nothing in the record to suggest the discipline of dismissal imposed on the Claimant by Carrier was either arbitrary, capricious, excessive, or discriminatory we cannot and will not substitute our judgment for that of the Carrier. In any event, we note that the merits of the instant case more than adequately supports Carrier's disciplinary action of dismissal.

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 16th day of January 1980.