

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. 4, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That the Grand Trunk Western Railroad Company violated the controlling agreement when Carman Marshall Taylor, Jr. was unjustly assessed twenty-five (25) demerits on May 5, 1978 as a result of investigation held on April 20, 1978.
2. That the dismissal of Carman Marshall Taylor, Jr. effective close of his shift on May 5, 1978 was improper and in violation of Rule 31.
3. That accordingly, the Grand Trunk Western Railroad Company be ordered to restore Carman Marshall Taylor, Jr. to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, and be compensated for all time lost plus reimbursement for all losses sustained account of loss of coverage under Health and Welfare and Life Insurance Agreement during 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, employed by the Carrier since 1971, was subject to an investigative hearing concerning 36 days of full or partial absence between October 31, 1977 and April 5, 1978. Following the hearing, which was conducted in a fair and proper manner, Claimant was assessed 25 demerits under the Carrier's disciplinary procedure. When combined with 55 previous demerits, the total exceeded 60, at which point the Carrier considers employes subject to dismissal from service.

The record for the five months under review is indeed a sorry one, even discounting certain absences due to illness, reported as such to the Carrier at the time. No convincing defense was presented by or on behalf of the Claimant for this record of inadequate attendance.

Further, the results of the investigative hearing are properly related, as to degree of penalty, to the employe's disciplinary history. This involved four previous instances in which Claimant was disciplined by imposition of demerits based on "excessive absenteeism".

The Board, however, must review the final action taken, and it finds that, while serious disciplinary action is well warranted, the penalty of dismissal from service is excessive and leaves no opportunity for the employe to correct his ways.

The Board will therefore direct that the Claimant be offered reinstatement to his former position with seniority intact, but without retroactive pay or benefits. The Claimant must understand, however, that the period since May 5, 1978, is considered a disciplinary suspension, and that his continuation in employment is dependent on the maintenance of an exemplary attendance record. His disciplinary history, including the resulting suspension herein, remains on the Claimant's record.

A W A R D

Claim sustained to the extent indicated in the findings.

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 20th day of February, 1980.