

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Association of Machinists
and Aerospace Workers

{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rules 32, 16, and 17, when they unjustly dismissed Machinist E. P. Sparr from service effective September 1, 1977.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Sparr in the amount of eight hours (8') per day at the pro rata rate beginning August 23, 1977, until returned to service, and to include all vacation rights, insurance benefits and all other rights he may be entitled to.

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, a machinist in the Carrier's North Little Rock, Arkansas facility was dismissed from service on September 1, 1977 after an investigation held on August 30, 1977. Previously, the claimant has been suspended pending investigation for his alleged failure to protect his assignment for the period from July 20, 1977 through August 22, 1977. The claimant has been in the carrier's employ for thirty-one years.

The carrier contends that there is substantial evidence to support not only the charge but also the penalty. According to the carrier, the claimant was absent without permission in violation of Rule 16(a) for a period of one month and the claimant's work history demonstrates his inability to timely and consistently protect his assignment. The organization's secondary contention is the claimant protect his assignment. The organization's primary contention is that the claimant did not receive a fair hearing as contemplated by Rule 32. But even assuming there was a fair hearing, the evidence adduced at the investigation, the organization asserts, indicates that the claimant was entitled to take a leave of absence (Rule 16). Alternatively, the organization argues

the claimant had permission to be absent in accord with Rule 17. The claimant does not deny that he was absent from his assignment during the period in question.

After carefully reviewing the transcript, we conclude the claimant received a fair and impartial hearing within the meaning of Rule 32. The claimant acknowledged that he received substantive notice of the charges against him. He had the opportunity to call witnesses and was represented by three outstanding advocates. The hearing officer did properly limit the scope of cross-examination questions concerning the carrier's method of replacing the claimant during his one month hiatus. The hearing officer has some discretion to limit cross-examination to prevent the investigation from becoming embroiled in tangential matters. The manner in which the carrier replaced the claimant during July and August of 1977 would provide this Board with no assistance in adjudicating the claim.

Without restating a long line of precedent, it is not the function of this Board to weigh the evidence or the credibility of witnesses. From the record, there is substantial evidence supporting the fact that the carrier never granted the claimant permission to be absent. The claimant, if he believed such permission had been unjustifiably withheld, should have continued to work and brought a grievance. The claimant may not take matters into his own hands even if he really believes the carrier has violated the agreement. Every employee has the obligation to report on time and to work his scheduled hours. Second Division Award No. 6710 (Dolnick).

Even though the carrier proved the charge against the claimant, we rule, in light of the claimant's three decades of service and other mitigating circumstances, that the penalty of dismissal was unduly harsh. The claimant should be reinstated with all the seniority credits he held on September 1, 1977 but without back pay. However, the claimant should not interpret our consideration to be an exoneration of the claimant's position. On the contrary, the claimant was wrong. The Board will not tolerate any more violations of work rules by the claimant. Another serious violation by the claimant will not be viewed in such a sympathetic fashion. The claimant must from this day forward strictly adhere to all his employment obligations and duties. He should concentrate on his work and improve his attitude. The claimant must realize that his personal problems cannot interfere with his job performance. The claimant should seek professional help, if necessary, to resolve his problems. His work duties must now take priority over his personal problems.

A W A R D

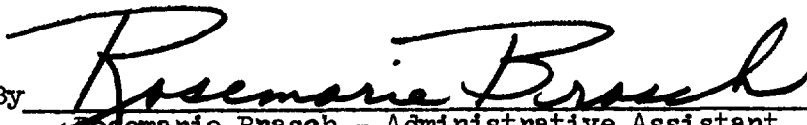
Claim is sustained only to the extent consistent with our findings.

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Award No. 8336
Docket No. 8222
2-MP-MA-'80

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 April, 1980.