

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Electrical Workers)
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Gregory Jones was unjustly dismissed from the service of the Carrier on the date of August 8, 1978.
2. That, accordingly, the Carrier be ordered to reinstate Electrician Gregory Jones to his former position with seniority rights unimpaired and compensated for all lost time.

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 was discharged from service on August 8, 1978, allegedly as a result of "excessive absenteeism: June 16th-July 31, 1978, all working days inclusive."

On July 31, 1978, Claimant was sent a Notice of Trial, Form G-250, instructing him to attend a hearing on the matter which was to be held on August 8, 1978. Said Notice was sent by certified mail with receipt requested and was signed for by one "Renee Jones", with date of delivery indicated as August 1, 1978. A hearing on the matter was held as scheduled; however, the Claimant did not attend the hearing and the reason for his absence, to this date, is unknown to the parties.

Carrier contends that Claimant's unauthorized and excessive absence has been established through uncontroverted testimony. Moreover, Carrier maintains that Claimant's failure to appear at the August 8, 1978, hearing further supports his guilt in this matter. Carrier additionally maintains that Claimant's cavalier attitude, his short term status as an employee, and his prior disciplinary record for similar offenses warrant the discharge penalty which has been imposed.

Claimant's Organization contends that no valid testimony was produced to indicate Claimant's guilt. Organization argues further that Claimant's failure to appear at the August 8, 1978 hearing does not, in itself, confirm Claimant's guilt since several other factors could possibly have been the cause of said absence. Accordingly, Organization argues that hearing officer should have granted a postponement of the hearing in order that the reason for Claimant's initial absence from work and his absence from the hearing could be ascertained. Organization further contends that Carrier's mailing of MD5A medical form to the Claimant demonstrates Carrier's admission that Claimant may have been absent from work because of personal illness. Lastly, Organization argues that Carrier's reference to Claimant's past disciplinary record involving excessive absences is improper since this information was not included as a part of the initial discharge statement.

Following the investigation hearing a preliminary procedural question was raised by the Claimant's Organization regarding a reference in Carrier's Rebuttal as to why Claimant received MD5A Form. Organization contends that this particular issue was never handled on the property either in correspondence and/or discussion, and therefore, according to the Organization, such reference by Carrier in its Rebuttal is inappropriate.

This Board has carefully reviewed the record in this instant dispute and concurs with the Carrier's position herein. The Board is satisfied that: (1) the record in this matter contains a sufficient quantum of proof to establish the Claimant's guilt as charged; (2) the penalty assessed is neither harsh, excessive or arbitrary; and, (3) despite the Organization's motion regarding the hearing officer's refusal to postpone the hearing, this Board is further satisfied that said hearing was fair and impartial.

The Carrier's position in this matter is predicated upon several factors: Claimant's actual absence from work as cited; his past record in similar instances, and, his failure to attend the investigatory hearing and thus his failure to offer any defense on his own behalf. The Organization argues that Claimant's absences from the hearing does not, in itself, confirm guilt. While this position may be true, the record clearly shows that Carrier had sufficient grounds for the dismissal and that Claimant was properly notified of the scheduled hearing and his right to present favorable evidence in defense of his actions. At no time prior to the hearing was there any objection as to the procedure which was utilized in scheduling the hearing or in the manner in which the Claimant was notified of this action. Furthermore, Claimant was informed that he was "expected to be present throughout the entire proceeding". Despite this clear and proper notification, however, the Claimant did not appear at the hearing, and this Board can only conclude that such absence, without any reasonable explanation whatsoever, indicates that the Claimant knowingly has waived any claim against Carrier for his position.

As to the Organization's objection to Carrier's reference to the use of the MD5A Medical Form in the Carrier's Rebuttal, this objection is overruled on the grounds that: (1) reference to said document was made at the investigation hearing which was held on Carrier's property; (2) the import of Carrier's rationale for referring to said document in the hearing and in the Rebuttal is

clear; (3) Organization representatives had opportunity to pose any clarifying questions relative to said document at investigatory hearing; and (4) reference to MD5A Medical Form was also included in Employee's Rebuttal.

On the basis of the foregoing analysis, this Board concludes that the discharge of the Claimant was proper and the claim, therefore will be denied.

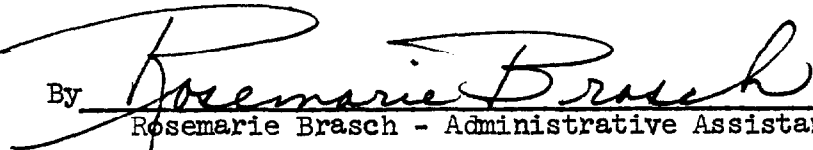
A W A R D

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 11th day of June, 1980.