

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { System Federation No. 6, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That as a result of an investigation held on October 26, 1977 Carman Donald D. Courtney was dismissed from the service of the Elgin, Joliet & Eastern Railway Company. Said dismissal is unfair, unjust, unreasonable, arbitrary, capricious and in violation of Rules 100 and 116.
2. That the Elgin, Joliet & Eastern Railroad Company, hereinafter referred to as Carrier, be ordered to reinstate Carman Ronald Courtney, hereinafter referred to as Claimant, to the service with seniority, vacation and all other rights unimpaired and compensated for all time lost commencing November 2, 1977 until said reinstatement is in effect. In addition to the money amounts claimed herein, the Carrier shall pay Claimant an additional six percent per annum compounded annually on the anniversary date of the claim.

### 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, Mr. Ronald Courtney, was notified by letter dated October 18, 1977, to report for a formal investigation on October 26, 1977, "to develop all facts and to determine your responsibility, if any, for allegedly being excessively absent during the period of September 28, 1977, through and including October 16, 1977, in that you failed to report for your work assignment on September 28, October 2, 9, 15 and 16, 1977."

The hearing was held as scheduled and as a result the action herein complained of was taken by the Carrier on November 1, 1977.

The investigation was conducted in accordance with statutory requirements and past practice. All parties were freely allowed to make statements, present witnesses, cross examine, and fully advance their viewpoints.

The Organization raises an objection to the conduct of the hearing process, claiming that the actions of the hearing officer indicated prejudgment of the case. The investigation record does not bear out such allegation and we find, considering the entire record, that claimant's rights were not jeopardized.

The record reveals that claimant was in fact absent from work on the dates charged. On one of the days he called in to report off but gave no reason and on one day he reported that he was having car trouble and would call back, but no call was received. In testimony Mr. Courtney reported that he was sick on one of the days and the others were attributed to car trouble. It would appear that minor automobile repairs or alternate transportation could have been found during this period of time. His excuses were somewhat less than credible.

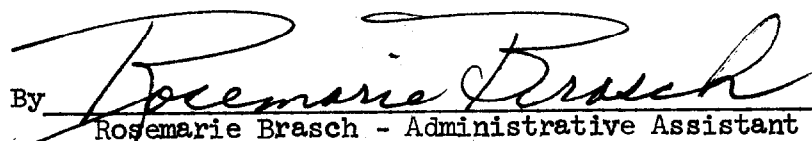
The record indicates that claimant was absent one third of the time during the period in question. The Carrier had a right to be concerned and certainly could not condone such a record in the absence of good reasons. Some form of disciplinary action was merited. While it is probably true that this offense standing alone would not justify the ultimate industrial relations penalty, it is appropriate to weigh Mr. Courtney's entire record to determine the reasonableness of the disciplinary action. In reviewing that record we find that claimant has been repeatedly warned and disciplined for similar offenses. He had been suspended for periods of ten and twenty days during the last year for such transgressions. In view of the entire record we are unable to determine that the Carrier's decision was arbitrary or capricious. The action taken is well within the Carrier's legal rights.

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 23rd day of July, 1980.