

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Washington Terminal Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, Laborer Curtis Haile was unjustly dismissed from the service of the Carrier on September 18, 1978.
2. That accordingly the Carrier be ordered to make the aforementioned Curtis Haile whole by restoring him to the Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages.

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.

On September 18, 1978 the Carrier sent the following letter to the Claimant by certified mail, return receipt requested:

"Company records indicate that you reported off duty account of illness of July 1, 1978.

Our Medical Examiner wrote to you on July 7, 1978, requesting that you furnish evidence of your disability and this you have failed to do.

My letters of August 4, 1978 and August 29, 1978 also requested you to furnish evidence of your disability to our Medical Director, which you have failed to do.

"In accordance with provisions of Rule 4 of the current working agreement between The Washington Terminal Company and the International Brotherhood of Firemen and Oilers, this will advise that, effective this date, you are hereby dismissed and dropped from the rolls and seniority roster of The Washington Terminal Company for absenting yourself without permission."

This letter was sent to the Claimant's address of record and was returned by the Postal Service as "Unclaimed", as were the letters of August 4 and August 29, 1978. The Medical Examiner's letter of July 7, 1978 was not returned to the Carrier, so a presumption of its delivery may be made.

The underlying question in this dispute is whether the Claimant was dismissed from service, as alleged by the Organization and as indicated in some of the Carrier's correspondence during the processing of the dispute; or whether he voluntarily relinquished his employment under the provision of Rule 4.

If Claimant was dismissed, he was -- as claimed by the Organization -- improperly denied an investigative hearing as provided in Rule 32. The Carrier argues, however, that there was not dismissal but rather that the Claimant terminated his own employment.

Rule 4 reads as follows:

"(a) An employee who is absent from work for any cause and has not arranged for a definite time to resume duty, will not be permitted to work except on approval of ranking officer, unless he gives his foreman notice of his intention to report for duty at least one hour before the expiration of the regular quitting time of the shift on which he is employed, on the day previous to the day on which he intends to report for work.

(b) When unable to comply with the above provisions, the employee must give a reasonable excuse for his inability to do so, to the ranking officer, before being allowed to return to work.

(c) In case an employee is unavoidably kept away from work on account of sickness, or for any other good cause, he shall notify his foreman as early as possible, either by telephone, or messenger, or United States Mail. Employees absenting themselves for five days without notifying the Management shall be considered out of service and dropped from the rolls and seniority roster, unless a justifiable reason can be shown as to why notice was not given or sent."

The Organization argues that the Claimant reported off sick on July 1, 1978 and thus complied with Rule 4 (c), in that he gave notice to the Carrier. Such notice of a day's absence for illness obviously cannot justify an indefinite

failure by an employee to report on his status. The Carrier states, without contradiction, that it has received no information from the Claimant, either prior to the letter of September 18, 1978 or up to the time the dispute was submitted to the Board.

Rule 4 (c) goes on to provide an orderly procedure for handling such matters. The form letter sent to the Claimant on July 7, 1978, requesting verification of the nature and extent of illness by the employee's own physician is not an unreasonable consequence of the provisions of Rule 4. Even though notice of illness was given by the Claimant on July 1, both Rule 4 and ordinary procedure dictate that an employee has an obligation to advise the Carrier of his condition.

Rule 4 (c) provides a self-effectuating remedy for such failure to meet the reporting obligation: "Employees absenting themselves for five days without notifying the Management shall be considered out of service and dropped from the roles and seniority roster."

In this instance, even though he reported off for July 1, he was given at least three opportunities to explain his extended absence thereafter. The fact that letters addressed to him at his last known address were unclaimed cannot be shown to negate the Carrier's attempts to communicate with him. More significantly, no word was received even after the claim was filed and processed.

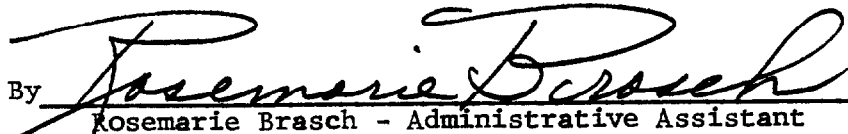
There is no showing here that the Claimant was dismissed from service. He effectuated his own termination.

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 1st day of October, 1980.