

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United
States and Canada
{
{
{ Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That under the controlling agreement Carman Welder John W. Bowers was unjustly removed from the service of the Missouri-Kansas-Texas Railroad Company, Denison, Texas, on December 13, 1978, following investigation held on December 12, 1978.
2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to restore Carman Welder Bowers to service with pay for all time lost and any other benefits he would have been entitled to beginning December 13, 1978.

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.

An investigative hearing was held on December 12, 1978 to determine whether Claimant's attendance record, which included 14 latenesses, 11 absences and 6 occasions when left work early, violated Circular No. Dp-2, particularly, General Rule A, which in part, states that:

"Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves without proper authority."

He was subsequently found guilty of violating this Rule and dismissed from service on December 13, 1978. This disposition was appealed.

In defense of his position, Claimant contends that he gave Carrier a reasonable explanation for each asserted lateness and absence which he concedes was an oversight, but, admittedly, without proper authorization. He argues that he complied with the letter of Agreement Rule 17 which requires timely notification

when an employee is detained from work because of sickness or "other good cause" and requested compensated reinstatement.

Carrier contrawise, contends that he did not have authority or permission to be late, absent or leave early on the charged dates and that he could have used the emergency line, that was specifically available between the hours of 5:00 P.M. and 8:00 A.M. to notify the shop in an orderly manner that he would be late. It argues that his poor aggregative attendance record was patently without mitigative justification and thus by definition, inimical to efficient rail operations.

In our review of this case, we agree with Carrier that Claimant was indifferent to his work obligations. Close reading of the investigative transcript clearly shows that while he sought to comply with Agreement Rule 17's notification requirement, his pattern and practice of compliance was palpably inconsistent with the spirit and intent of Rule 17 and Circular No. DP-2's General Rule A. He was mindful that an emergency line was available to permit employees the opportunity to notify Carrier in timely fashion of any intended lateness or absence, but he disregarded using this purposeful facility. His pattern of indifference to the emergency line does not appear to be coincidental. Similarly, his cavalier response to his admitted November 6, 1978 unauthorized absence confirms his lackadaisical attitude. In Second Division Award 6240, we stated in pertinent part that:

"This Board has repeatedly pointed up the detrimental effect of absenteeism upon the operations of the railroads. The confusion and disruption created when an employee absents himself from work without due notice to supervision, is harmful not only to the employer but to other employees as well."

We find this holding conceptually relevant to this dispute. Claimant's attendance record was plainly unacceptable.

On the other hand, we recognize that Claimant had been employed by Carrier for about 8 years and we believe that it would be judicially consistent with the principles of progressive discipline, if we reinstated him on a leniency basis to his position, without back pay. We hasten to add, however, that while we are modifying Carrier's justifiable penalty, with great reluctance, because of the seriousness of his actions, we expect that Claimant will fully comport with Carrier's attendance requirements.

A W A R D

Claim sustained to the extent expressed herein.

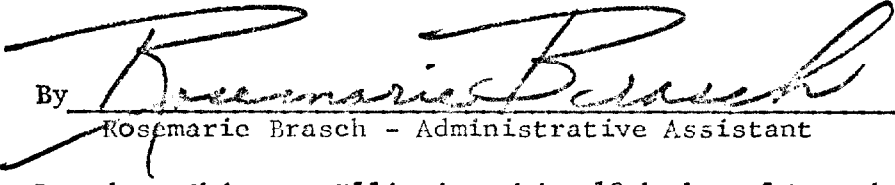
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Award No. 8502
Docket No. 8385
2-MKT-CM-'80

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 19th day of November, 1980.