

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

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. Jesse A. Ahmed, Laborer, Denver, Colorado, was unfairly dismissed from service of the Denver and Rio Grande Western Railroad Company, effective November 2, 1978.
2. That, accordingly, the Denver and Rio Grande Western Railroad Company be ordered to reinstate Mr. J. A. Ahmed to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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 laborer, was discharged after notice and a hearing on November 2, 1978 for habitual failure to report for duty with the latest absence occurring on October 26, 1978. The underlying facts are uncontested. Claimant was regularly employed in the mechanical department at the Burnham Shops in Denver, Colorado. During the previous July, claimant was often tardy and absent. On July 28, 1978, claimant received a warning and acknowledged that further absenteeism would result in probable dismissal. Thereafter, the carrier granted claimant a three week leave of absence so he could give his complete attention to his personal problems. Claimant was due to report back to his assignment at the conclusion of the leave of absence on October 16, 1978 but he failed to report until after his shift began on October 17, 1978. Between October 16, 1978 and October 24, 1978, claimant missed five out of seven working days. On October 25, 1978, claimant was absent again but he called his supervisor and the claimant promised to report to work on the following day. The claimant failed to report to his assigned duties on October 26, 1978. The claimant was absent

because of personal problems. Whenever he reported to work, the claimant competently performed his duties.

Excessive and habitual failure to report to an assignment is sufficient grounds for dismissal. Second Division Award No. 7898 (Weiss). The carrier can hardly maintain normal operations unless its employees regularly report to work. Second Division Award No. 7870 (Roukis). The evidence in this case is overwhelming that claimant was consistently absent which jeopardized the normal operation of the carrier by requiring last minute substitutes and other disruptions. Only three months before, the claimant had been warned that continued absences would lead to severe discipline including probable discharge. At the hearing, the claimant admitted to his infractions:

"Q. I believe you indicated that you did neglect your duty?

A. (Claimant) Yes, Sir.

Q. You did this of your own free will?

A. (Claimant) Of my own free will? I can't submit to that. Circumstances being about change, you have to do what you have to do."

Thus, the carrier proved that claimant was habitually absent.

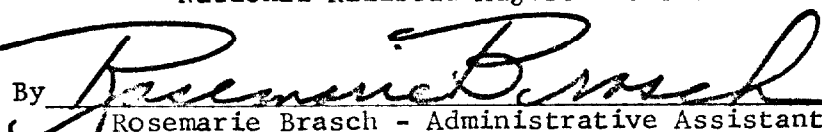
Lastly, the employees urge this Board to modify what they term an arbitrary penalty because of mitigating circumstances consisting of the claimant's preoccupation with personal problems and his competent performance on the job. Personal problems are rarely a justification for irregular attendance. Second Division Award No. 7778 (Van Wart). Furthermore, the carrier's conduct was hardly arbitrary. On the contrary, the carrier made several attempts to accomodate the claimant by granting him a leave of absence to rectify his personal problems and by warning the claimant of the consequences of continued failure to protect his assignments. Even at the hearing, the claimant refused to make a firm commitment to improve his attendance record if allowed to retain his position. Because the carrier gave the claimant reasonable opportunities to both resolve his personal problems and eliminate his absences we will not upset the carrier's assessment of discipline.

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 3rd day of December, 1980.