

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employees:

- 1. That in violation of the current agreement, Laborer Jerome Fulwood was unjustly suspended and dismissed from service of the Carrier following hearing held on date of December 12, 1978.
- 2. That accordingly the Carrier be ordered to make the aforementioned Jerome Fulwood whole by restoring him to 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.

An investigation was held on December 12, 1978 to determine whether Claimant was guilty of the charge of excessive absenteeism. He was subsequently apprised by letter, dated, December 27, 1978 that he was immediately terminated from Carrier's employment because his aggregative attendance record for a recently hired employee was unsatisfactory. He was first hired by Carrier as a laborer on September 15, 1978. This disposition was appealed on the property and is presently before this Division for appellate review.

In defense of his position, Claimant asserts that Carrier failed to afford him an investigative hearing that comported with the essential requirements of administrative due process and that his attendance record revealed that he was late 3 days and absent 6 days for reasons of illness, absent 2 days because of death in the family and absent 3 days for personal reasons. He argues that he gave Carrier adequate and satisfactory reasons for these absences and thus under these circumstances, his absences were warranted.

Carrier, contrariwise, disputes these assertions and contends that its dismissal decision was fully justified by the record.

In our review of this case, particularly the conduct of the investigative hearing, we do not find that Carrier committed any procedural errors that affected the integrity of the administrative trial. To the contrary, we find that Claimant was provided a fair and impartial hearing that was positively acknowledged by the Local Chairman at the close of the proceeding. Correlatively, we concur with Carrier's assessment that his attendance record was plainly unacceptable for a recently hired employee and find most disquieting his rationale and explanation for being absent 3 days for personal reasons. Claimant was responsible for observing more diligently Carrier's attendance rules and regulations. He did not comply with this basic employment obligation. In Second Division Award 7852, we held in pertinent part that:

"An employee has an obligation to report to work regularly and on time, regardless of his personal problems; this is a fundamental aspect of the employment relationship. No company, much less a railroad, can function effectively if it tolerates erratic attendance, excessive absenteeism and tardiness."

We find this holding on point with the facts herein.

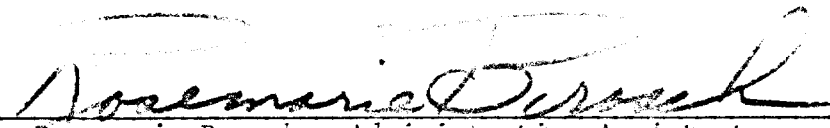
However, because we recognize that Claimant seriously indicated that he would be an exemplary employee if retained in service we will restore him to Carrier's employment, but without back pay, with the added proviso that we will promptly sustain a dismissal penalty for any recidivist deportment.

A W A R D

Claim sustained to the extent expressed herein.

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 7th day of January, 1981.