

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

Parties to Dispute: { Sheet Metal Workers' International Association
{
{ Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement, Sheet Metal Worker Leon Sellers was unjustly discharged from service on December 5, 1978.
2. That accordingly the Carrier be ordered to re-instate the aforementioned employe to service with all rights un-impaired, including seniority, vacation, health & Welfare benefits and life insurance.

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, a pipefitter, had accumulated eight years of service when the carrier dismissed him on December 5, 1978 for his alleged failure to report for his scheduled shift on October 29, 1978. After proper notice, an investigation was duly held on November 9, 1978. At the hearing, the claimant frankly admitted that he failed to report for his scheduled shift at 12:00 a.m. on October 29, 1978.

The organization contends the claimant called his foreman one half hour after the beginning of his shift and, therefore, he should be penalized according to Rule 47 of the applicable agreement. However, the organization's primary argument is, that in spite of the admitted offense, the carrier's discharge of the claimant was arbitrary and excessive in view of the fact that he was found guilty of missing only one shift. The carrier urges us to sustain the dismissal because claimant's prior work record discloses evidence of four other absences in the previous seven months. Applying progressive discipline, the carrier states that the claimant, who had been suspended on three previous occasions, had been amply warned that each absence would result in a more severe penalty.

There is no doubt that the carrier proved the charge. Since the claimant failed to report on October 29, 1979, the issue becomes whether or not his penalty

should be restricted in accord with Rule 47. The relevant portion of Rule 47 is:

"An employee who reports for duty less than fifteen minutes late will be held off until fifteen minutes after his regular starting time; it being understood that employees reporting more than fifteen minutes late will be held for an additional fifteen minutes.

The above to apply to employees who are only occasionally late reporting for work. Employees who make a practice of being frequently late, will not receive the benefit of the above change, but will be held off for the full thirty minutes."

In this case, the claimant did call in thirty minutes late saying he had overslept. The record discloses that he did not report to work at all. Because claimant was absent and not merely tardy, his conduct is governed by Rule 19 and not Rule 47. To be excused under Rule 19, the claimant must have been "... unavoidably kept from work...". Oversleeping is not a valid excuse. Thus, the carrier may impose discipline beyond the limitation in Rule 47.

The remaining issue is whether the penalty of dismissal is arbitrary, excessive or unduly harsh under the surrounding circumstances. After carefully examining the record, we rule that the assessed penalty was not commensurate with the proven offense.

The carrier may consider the claimant's prior work record in determining the amount of discipline. Here, the claimant had a virtually unblemished record during most of his eight years of service. Only recently had he been guilty of reporting to work late. He had, in fact, served three suspension in the seven months before the instant infraction. The last time claimant failed to report for his assignment, he was suspended for eight working days. Even by applying the principle of progressive discipline, discharge for the next offense was both excessive and too harsh. We are usually reluctant to reverse the carrier's assessment of discipline, but because of the mitigating circumstances present in this case, claimant should be reinstated with seniority unimpaired but without back pay. Claimant's request for retroactive vacation, health and welfare benefits, life insurance and other relief is denied.

The claimant should not interpret our decision today as a ratification of his conduct. On the contrary, we have found the claimant committed a serious offense. To maintain the safe and efficient operation of a large railroad yard, the carrier must rely on employees to zealously protect their assignments and to timely report for each and every shift. Therefore, this Board will not look with favor upon future violations by the claimant. We expect the claimant, upon his return to work, to report for his scheduled shift each day unless he has an unavoidable excuse or has received permission from the carrier to be absent.

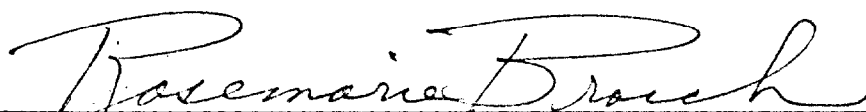
A W A R D

Claim sustained but only to the extent consistent with our findings.

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 14th day of January, 1981.