

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers  
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Mr. Gregory Price, laborer, Chicago, Illinois, was unfairly dismissed from service of the Chicago Northwestern Transportation Company, effective August 4, 1978.
2. That, accordingly, the Chicago Northwestern Transportation Company be ordered to restore Mr. Gregory Price 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.

Gregory Price, a laborer in carrier's employ, was dismissed from service for not wearing safety goggles while working as fuel man fueling locomotives on July 18, 1978.

Carrier argued that claimant had been disciplined on two previous occasions for the same safety rule infraction. He has not learned from those encounters with discipline. Thus, dismissal is the only course left to Carrier.

Carrier also argued that the original claim was untimely filed, and consequently, the claim should be dismissed.

The organization argued that claimant took off his safety goggles in order to see the fuel gauge on the locomotive. He did not wish to overfill the tank and spill fuel. It also maintained that carrier's argument that the claim was not timely filed cannot be considered by the Board because it was not presented on the property prior to the organization filing its intention to submit an ex parte submission to this Division of the Board.

This Board has carefully reviewed the procedural argument presented by carrier and must conclude that the opportunity for carrier to raise a procedural argument was prior to the time petitioner filed its intent to submit an ex parte submission to this Division of the Board. This Board is not anxious to dispose of claims on procedural or technical grounds. We do, however, support the concept that procedures outlined in agreements should be strictly adhered to.

In the instant case, carrier responded at each step of the procedure without any indication that it considered the claim untimely filed. Its acquiescence, together with the fact that carrier did not make the argument until petitioner had moved the case to the Second Division of the Board, more than supports the decision that the case should be decided on its merits.

The record on the merits of this case clearly indicates that claimant did violate the rules by not wearing his safety goggles while fueling engines. This board is mindful of claimant's poor record on this identical point and his reluctance to learn from prior discipline. Based on this record, we do not, however, think that claimant should be separated from his employment on a permanent basis. But claimant should not construe the Board's decision as in any way condoning his propensity to ignore safety rules.

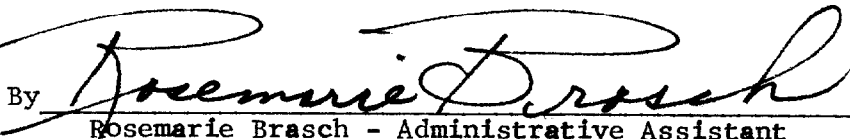
Claimant should view this decision as a new chance to become a worthwhile and cooperative employe and make a special effort to steer clear of rule infraction. This Board would not look favorably on future problems of this type involving claimant.

A W A R D

Claimant shall be returned to work with all rights and benefits, but with no compensation for time lost.

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 25th day of February, 1981.