

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Carman Loyd Phillips was dismissed from service in violation of the current agreement on April 19, 1978, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
 - (a) Restore him to service with seniority and all employee rights unimpaired.
 - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
 - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from service.

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.

The claimant was employed by the Carrier as a carman helper at Bloomington, Indiana, and was working in that capacity at the time of the occurrence giving rise to the dispute herein.

Claimant last worked on February 14, 1978, on which date he advised his superior officer, the Assistant Departmental Foreman, that he had a back injury and would like to go to the doctor. He was vague as to how and when he hurt his back, but advised that it had been bothering him about three weeks. He was advised that it may be well for him to see his family doctor. Claimant again contacted the Assistant Departmental Foreman on February 16 or 17, when he called on the telephone and stated that he would have to return to the doctor in three weeks.

The Carrier states that the Assistant Departmental Foreman tried several times to contact claimant over the telephone, but was unable to do so. On March 28, 1978 claimant's wife advised that she had not seen or heard from claimant since February 14, 1978. On that date, March 28, 1978, claimant was notified, by registered letter at his last known address, by Carrier's Master Mechanic:

"You are charged with being off duty without permission and failure to protect your assignment since March 7, 1978.

Investigation concerning these charges will be held on April 6, 1978 at 1:00 p.m., Office of Car Foreman, Bloomington, Indiana.

You must be present and may be represented by employees of your own choice."

The investigation was conducted on the scheduled date. Claimant did not appear. After the investigation started, the Local Chairman requested a postponement; however, when asked by the conducting officer to advise a date that he wished to reschedule the investigation, the Local Chairman replied:

"No exact date. July until Mr. Phillips could be located."

The request was denied by the conducting officer. We find nothing wrong with such denial as the Agreement contemplates the prompt handling of disciplinary matters, and the investigation could not be postponed indefinitely.

Following the investigation, Claimant was dismissed from Carrier's service on April 19, 1978.

In the handling of the dispute on the property following claimant's dismissal, it developed that claimant was in Miami, Florida and had contacted the Carrier's Master Mechanic's office that he was going to work for another railroad in that area.

Based upon the entire record, the Board is convinced that claimant had no serious intention of protecting his assignment with the Carrier, and, in fact abandoned his position. His dismissal from service was entirely justified.

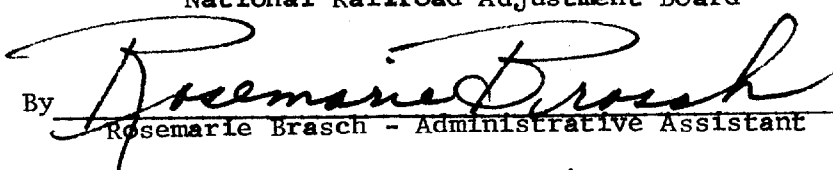
A W A R D

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 4th day of March, 1981.