

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
and Canada
(Washington Terminal Company

Dispute: Claim of Employes:

1. That the Washington Terminal Company violated rule 29 of the controlling agreement when they unjustly dismissed car cleaner E. B. Ferguson as a result of an investigation held on October 10, 1978.
2. That accordingly the Washington Terminal Company be ordered to restore car cleaner E. B. Ferguson to the rolls with seniority and vacation rights unimpaired and compensated for his net wage loss.

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, Mr. Ferguson, was employed as a carman by the Carrier. On October 3, 1978, he was notified to report for a hearing October 10, 1978. Claimant was charged with excessive loss of time during the months of August and September, 1978. The investigation was held as scheduled and, following that session, Mr. Ferguson was dismissed from service with the Carrier on October 11, 1978.

The Organization raises a procedural objection that Claimant did not receive a fair hearing. Careful review of the transcript reveals that all parties were present and allowed to present witnesses if they so desired. Further, all parties were given the opportunity to advance their interests, cross examine witnesses, and introduce evidence in support of their position. We find that the hearing was conducted in accordance with past practice and statutory requirements.

Additionally, the Organization views the penalty as excessive and asks that this Board so find.

The record reveals that during the period of time under consideration, Mr. Ferguson was absent fifteen days during a thirty-one day working period. The validity of the record was not challenged. The Organization pleads extenuating

circumstances, but the record does not substantiate such a position. When questioned regarding the reasons for absence on the days in question, Claimant responded that he didn't remember on some days, that he wasn't feeling too good on others, that he was in a car accident on one day and had to see a lawyer on one of the days. Such a varied response does not indicate any underlying problem which would meet the criteria of extenuating circumstance. The amount of absence from work during the period of time under consideration is clearly in excess of that which could be countenanced by the Carrier. Claimant was guilty as charged.

In assessing penalty the Carrier relies on the past record of Claimant. That record indicates that Mr. Ferguson had been suspended on three separate occasions during the last eighteen months for the same offense. Each suspension was increasingly severe in an attempt to correct the problem.

In view of the foregoing and the entire record we find that the Carrier was within its legal rights to dismiss Claimant.

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.