

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement Service Attendant Thomas F. Grimes, Jr., was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on February 16, 1979, after a formal investigation was held in the office of Mr. N. D. Parrish, Conducting Officer, on February 1, 1979.
2. That accordingly Thomas F. Grimes, Jr., Service Attendant be restored to his regular assignment at South Louisville Shops with all seniority unimpaired, vacation, health and welfare, hospital and life insurance and dental insurance be paid and compensated for all lost time, effective February 16, 1979, and the payment of 6% interest rate added thereto.

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 Service Attendant April 12, 1976.

On January 22, 1979, the Carrier directed a letter to the Claimant charging him with excessive absenteeism since January 7, 1978. The letter outlined his attendance record for the period in question and directed him to attend an investigation scheduled for February 1, 1979.

The investigation was held as scheduled. Based on the evidence adduced at the investigation, the Carrier dismissed the Claimant effective February 16, 1979.

In considering whether there is substantial evidence in the record to support the charge, the Board concludes there is. The condition of the transcript and the fact that some of the dates listed in the charge were disputed leaves some doubt as to the exact extent or degree of Mr. Grimes' absenteeism problem. However, there is little doubt that he had a serious absenteeism problem deserving of some discipline. For instance, Mr. C. T. McKeehan, a Supervisor, testified that Mr.

Grimes' record indicated that during the little more than a year in question, Mr. Grimes was absent 37 days unexcused, 21 days sick, 6 days for jury duty, 11 days for an on-duty accident, 4 days excused and 1 day as a result of a family sickness.

The real and remaining question in the Board's mind is whether dismissal is excessive. The Carrier comes to the Board seeking to justify dismissal by use of the Claimant's relevant past disciplinary record which was comprised of four letters noting problems with absenteeism. Two of the letters were issued in 1977, one in March 1978, and one approximately three weeks before the letter of charge. **Notably**, there are no previous suspensions for absenteeism on his record. First, the Board is compelled to say we are effectively precluded from considering the Claimant's past record. The Board finds no evidence that this record was presented on the property either during the investigation or in the handling of the claim. Second, even if the Board could consider the Claimant's previous disciplinary record it wouldn't support permanent dismissal. We have often said that for offenses of this nature, permanent dismissal should be preceded by progressive suspension. There is no such evidence in this record.

We agree with the Carrier that the Claimant's record was deplorable and that no Carrier should be required to tolerate it, but the fact is the Carrier itself voluntarily chose to tolerate the Claimant's absenteeism for a significant period of time. At no time during the Claimant's tenure or during the period under charge did the Carrier seek to impress upon the Claimant in any meaningful way, such as a disciplinary suspension, the seriousness of his attendance problem. Too often employers ignore, tolerate and effectively condone the absenteeism of recalcitrant employees such as Mr. Grimes until one day they get so frustrated they attempt to solve the problem in one stroke of the pen. It has been said so many times that it barely should require repeating, that a Carrier should not expect, except in the most extreme of situations to come to the Board in hopes of it supporting a dismissal for absenteeism without evidence of prior suspensions that would fully convince us that a Claimant is beyond correction. Meaningful disciplinary efforts should be relied on early in cases such as Mr. Grimes, before the problem gets out of hand. The Carrier should have been more firm previously, especially for unexcused absences without notification. This is not a difficult task and in the Carrier's interest to do so.

As for Mr. Grimes, we hope that he now fully comprehends that his obligation to the Carrier is to offer himself as a "full time" employee and that any future behavior remotely similar to his previous work habits will be taken as unfortunate evidence that he is beyond reasonable corrective efforts and dismissal will then be fully appropriate. In view that the Claimant's past record cannot support permanent dismissal, the discharge will be converted to a suspension without pay for any time lost and he will be reinstated, seniority rights unimpaired.

A W A R D

The discipline is modified to the extent indicated in the Findings.

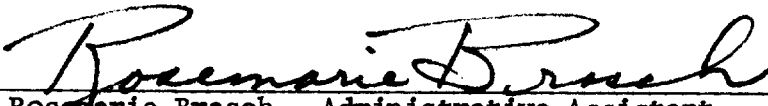
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Award No. 8701
Docket No. 8822
2-L&N-FO-'81

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 29th day of April, 1981.