

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement Laborer, D. L. Smith, was unjustly dismissed from the service of the St. Louis Southwestern Railway Company on July 16, 1979.
2. That accordingly, the St. Louis Southwestern Railway Co., compensate Laborer, D. L. Smith at the pro rata rate of pay for each work day beginning July 16, 1979, until he is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation right and seniority unimpaired. Claim is also made for Laborer, D. L. Smith, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Smith an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 was classified as a Laborer and assigned to the Carrier's Locomotive Plant at Pine Bluff, Arkansas. According to the Carrier, the Claimant was repeatedly warned about his absenteeism and just as often promised improvement, to no avail. His continuing non-availability for duty prompted a study of his absenteeism record which revealed that from October 16, 1978 through May 5, 1979, the Claimant was off-duty 32% of the time, such absences ranging from 10% to as much as 75% of the time available to be worked in any given month during this period. The Carrier also cites the statistic that thirteen (13) such absences occurred on the day before his scheduled rest days and that twelve (12) such absences occurred on the day immediately post such rest days. According to the Carrier, the majority of such absences were for "upset stomach" or "stomach virus" for which visits to the doctor was apparently unnecessary, until the charge letter was issued,

after which time the Claimant produced a physician's statement to the effect that he was receiving a reaction to working with certain cleaning materials with which he had to work. The adverse affect was that of a skin rash. An investigation was held and, as a result, the Claimant was dismissed for violating Rule 810 and specifically his continued failure to protect his assignment.

The Organization contends that the Claimant's absences resulted from an allergic reaction to a particular soap. The Board does not presume to possess the expertise to adjudge cause/effect relationships of chemical reactions, but it cannot overlook the showing that the Claimant's absences spanned a broad range of circumstances, including his dislike for working third shift. We are also unable to ignore the timing of the presentation of the allergy coming as it did after the Carrier's inclination to consider termination was made known. We find a lack of showing by the Organization that the Claimant's "allergic condition" was the cause of his intolerable record of absences. In sum, we find no basis to disturb the Carrier's disciplinary action in this case.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of May, 1981.