

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

Parties to Dispute: { International Brotherhood of Firemen & Oilers
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Frederick L. Moore was unjustly dismissed from service of the Carrier following trial held on March 6, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned Frederick L. Moore whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 employees 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, Frederick L. Moore, entered the service of the Carrier on January 12, 1968. At the inception of the matter here in dispute, Claimant held a position as Laborer at the Beech Grove Medium Repair Car Shop, Beech Grove, Indiana, with a tour of duty 7:00 A.M. to 3:30 P.M., rest days Saturday and Sunday.

By a letter dated February 20, 1979, the Carrier notified the Claimant to attend a trial on March 6, 1979 in order to answer charges in connection with the following:

"Failure to protect your assigned position on dates of November 3, 7, 8, 9, 10, 13, 15, 16, 20, 29 and 30; December 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, and 29, 1978; January 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31; February 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16 and 20, 1979."

The trial was held as scheduled with Claimant present thereat and represented. Following the trial Carrier notified Claimant by Form G-32, Notice of Discipline, dated March 14, 1979, that he was disciplined by "Dismissal in all capacities" for the offense with which he had been charged.

It cannot be disputed that Claimant failed to fully protect his assigned position on the dates indicated. Testimony adduced at the trial reflected the following daily attendance record:

November 3 - sick
November 7 - present 5-1/2 hours
November 8 - 5-1/2 hours
November 9 - sick
November 10 - sick
November 13 - leave
November 15 - 3 hours and 15 minutes
On the sixteenth, 3 hours and 15 minutes. On the twentieth, present one hour. On the twenty-ninth and the thirtieth, absence unauthorized or unknown. During the month of December, absence unknown for the entire month of working days. The month of January, absence unknown for all working days. Absence unknown for the month of February also.

At the trial, Claimant produced a certificate from a physician stating that Claimant had been under the doctor's "professional care, and was totally incapacitate from 11-17-78 to present". Nevertheless, Claimant made no effort before his extended absence without authority to obtain a medical leave.

The trial was fairly and properly conducted, and discipline was surely warranted. However, Mr. Moore had an unblemished record with Carrier for almost 11 years. It would appear that his absence was contributed to, at least to some extent, by some type of illness. Based upon the whole record, we believe that permanent separation from Carrier's service is unreasonable. Accordingly, we order Claimant restored to duty without pay for benefits or time lost and without loss of seniority.

A W A R D

Claim sustained in conformity with foregoing opinion.

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 26th day of August, 1981.