

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
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Freight Car Repairer Welder, Harold E. Murphy was unjustly dismissed from service as result of investigation held in the office of General Plant Manager, Raceland Car Shop on June 2, 1978 in violation of Rule 37 account the charges were not exactly proven to be true and the discipline rendered was far too excessive.
2. Accordingly, Murphy is entitled to be reinstated to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired, with compensation for all lost time plus 6% annual interest. Also reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during time 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 employee or employees involved in this dispute are respectively carrier and employee 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 employed as Freight Car Repairer and Welder at Carrier's Raceland Car Shop. He had been in service about eleven years. His assigned hours were 3:00 P.M. to 11:00 P.M., Monday through Friday.

On May 22, 1978, claimant was notified:

"Arrange to attend investigation to be held in office of General Plant Manager, Raceland Car Shops, Thursday, May 25, 1978, at 10:00 A.M.

You are charged with being away from your assigned position without the permission of your supervisor and falsifying your daily service card on the date of May 19, 1978.

Please arrange for representatives and/or witnesses, if desired."

The investigation was postponed and conducted on June 2, 1978. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated. On June 15, 1978, claimant was notified of his dismissal from the service.

It appears from the record that it was the practice at this location for employees to fill out their time cards at the beginning of the shift. There was substantial evidence in the investigation including the claimant's statement, that claimant was absent from his work location between the hours of 8:00 P.M. and 11:00 P.M., and that he did not have permission to be absent. Claimant contended that he was recovering from influenza on the night involved, and at the beginning of his lunch period he had gone to his truck and laid down in order to rest, had gone to sleep and slept until 2:00 A.M. the following morning.

In the investigation conducted on June 2, 1978, there was evidence that claimant attempted to have his time card corrected to four hours when he returned to work the following Monday. Under these circumstances we do not consider that claimant was attempting to defraud the Carrier.

Claimant was subject to discipline for being absent from his assigned position without permission. However, permanent dismissal was excessive. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

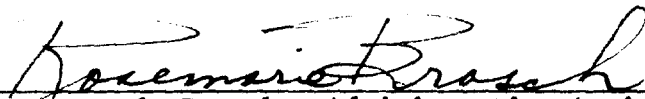
A W A R D

Claim sustained to the extent indicated in Findings.

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 2nd day of September, 1981.