

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. Edward Amparan when they removed him from service on September 13, 1978 as a result of an investigation held on August 29, 1978.
- (2) That the investigation was neither fair nor impartial.
- (3) That, therefore, he be returned to service with seniority and all other rights, benefits and privileges restored, and
- (4) That he be compensated for all lost time including overtime and holiday pay, and,
- (5) That he be made whole for health and welfare benefits, and,
- (6) That he be made whole for all vacation rights, and,
- (7) That he be made whole for pension benefits, unemployment and sickness insurance, and,
- (8) That he be made whole for any and all other benefits, not specifically mentioned herein, that he would have received or would have earned had he not been withheld from 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 electrician in Carrier's 21st Street, Chicago, Maintenance facility.

The Carrier contends that on nine separate occasions between July 23, 1978, and August 20, 1978, claimant was late for work or absent from his assigned position without permission.

On August 21, 1978, claimant was notified to appear for a formal investigation at 9:00 A.M., August 29, 1978, on the charge:

"Your responsibility for your failure to comply with that portion of National Railroad Passenger Corporation Rule of Conduct 'K' which reads: 'Employees must report for duty at the designated time and place ...' and that portion of NRPC Rule of Conduct 'L' which reads: 'Employees shall not ... be absent from duty ... without proper authority' in that while assigned as an electrician at the 21st Street Maintenance Facility, Chicago, Illinois:

1. On July 23, 1978, you reported for work at 8:01 AM, thirty-one (31) minutes after your scheduled reporting time of 7:30 AM.
2. On July 25, 1978, you reported for work at 8:00 AM, thirty (30) minutes after your scheduled reporting time of 7:30 AM.
3. On July 27, 1978, you were absent without permission.
4. On July 31, 1978, you were absent without permission.
5. On August 13, 1978, you were absent without permission.
6. On August 14, 1978, you were absent without permission.
7. On August 15, 1978, you were absent without permission.
8. On August 17, 1978, you reported for work at 9:00 AM, one hour and thirty minutes after your scheduled reporting time of 7:30 AM.
9. On August 20, 1978, you reported for work at 7:36 AM, six (6) minutes after your scheduled reporting time of 7:30 AM."

By mutual agreement, the investigation was rescheduled for 2:00 P.M. the same date.

Carrier's Rules "K" and "L" read:

- "K. Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor."
- "L. Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority."

Following the investigation, claimant was dismissed from service effective September 13, 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. Claimant gave various reasons for his tardiness and absences - delay in bus transportation; being sick; that his girl friend called in on some dates that he was allegedly sick. His girl friend testified that she called in on some occasions, but did not remember who she talked to. On other occasions his sister was to call in for him, but failed to do so. His tardiness of 1 hour 30 minutes on August 17, 1978, was due to being in the custody of Cook County Sheriff Police. The Board has issued many awards that being in jail or in the custody of Police is not a just cause for absence.

Based on the entire record, the Board is convinced that discipline was warranted. However, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost. Claimant should understand that the purpose of this Award is to give him one last chance to become a reliable and dependable employe of the Carrier, and that further major infractions will result in the permanent termination of his services. He should also understand that his work attendance record must improve.

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.