

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That as a result of an investigation held on July 6, 1979, Carman R. Barrentine was dismissed from the service of The Belt Railway Company of Chicago effective July 17, 1979. Said dismissal of Carman Barrentine is arbitrary, capricious, and an abuse of managerial discretion as well as being in violation of Rules 20 and 28 of the current working Agreement.
2. That The Belt Railway Company of Chicago be ordered to reinstate Carman R. Barrentine to their services with seniority, vacation, and all other rights unimpaired and to compensate him for all time lost commencing July 17, 1979 and continuing until such reinstatement is in effect.
3. That The Belt Railway Company of Chicago be ordered to pay any and all dental, hospital, surgical and medical benefits under the Agreement that the Carman R. Barrentine suffers for all time held out of service and that The Belt Railway Company of Chicago pay the premiums for Carman Barrentine's group life insurance for all time held out of service. In addition, to the money amounts claimed herein, The Belt Railway Company of Chicago shall pay an additional amount of 6% per annum, compounded annually on the anniversary date of 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.

An investigation was held on July 6, 1979 pursuant to Agreement Rule 20 to ascertain whether Claimant, a car welder, failed to give proper notice before laying off work and not reporting to his work assignment on "B" repair track as scheduled from 7:00 A.M. to 3:00 P.M. on June 15, 1979. Carrier determined that the investigative record demonstrated that he failed to protect his assignment and dismissed him from service, effective July 17, 1979. This disposition was appealed on both procedural and substantive grounds.

In support of his position, Claimant argues that the June 21, 1979 Notice of Investigation was not precise as required by Rule 20, thus precluding the preparation of an effective defense. He specifically asserts that the hearing officer prejudiced his defense, when rules that were not mentioned in the disciplinary notice were cited at the investigation. He contends that he was ill on June 15, 1979 and tried to call Carrier but without avail. He avers that his telephone wasn't working properly and that he didn't know until that evening that his wife hadn't reported his condition to Carrier officials.

Carrier contends that the Notice of Investigation pointedly apprised Claimant that he was being investigated because of his failure to report for duty on June 15, 1979 at a specific time, date and place and for his cavalier demeanor when questioned about his absence. It asserts that the investigative notice comported with the notification requirements of Rule 20 and Claimant was fully aware of the charges. It argues that Claimant did not contend that he was ill on June 15 prior to July 6 hearing or contest the adverse testimony provided by Carrier witnesses at the administrative trial. It avers that when this offense is objectively considered within the context of his past disciplinary record, which includes similar type infractions, dismissal was justified.

In our review of this case, we concur with Carrier's position that the June 17, 1979 Notice of Investigation was sufficiently written, consistent with the due process standards of this Board, to permit Claimant the opportunity to prepare a thorough and supportive defense. The charges delineated therein were specific with respect to the nature of the alleged offense and contained the essential particulars required by Rule 20 of the controlling agreement. There were no procedural impairments.

In a similar vein, we find that the investigative record clearly shows that Claimant failed to protect his assignment. He didn't inform his supervisors prior to the July 16 administrative hearing that he was ill on June 15, 1979 or more importantly, rebut or place into contention the accusatory statements made by Supervisors Nalls and Miller at the investigation. His defense that his telephone wasn't working properly that day and that his wife failed to call Carrier is unpersuasive. Mere assertions are not proof. From the record, we can only conclude that he was manifestly indifferent to his work and it is a serious offense in this industry. While we agree with Carrier that this offense when coupled with his past disciplinary record certainly warrants a commensurate disciplinary penalty, we believe that his dismissal to date was sufficient punishment for his wrongdoing. We will restore him to work, but without back pay, with the conditional understanding that we will unhesitatingly sustain a dismissal penalty for any recedivist behavior.

A W A R D

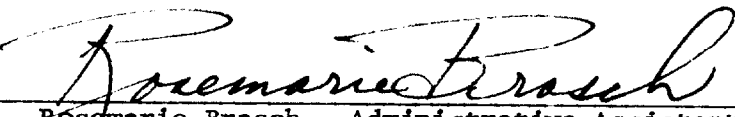
Claim sustained to the extent expressed herein.

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Award No. 8805
Docket No. 8765
2-BRCofC-CM-'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 28th day of October, 1981.