

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That at the Wayne Junction Facility the Consolidated Rail Corporation violated the current agreement when 2nd Class Lineman Bernard Gilliam was unjustly treated when he was not afforded a hearing in accord with Rule 34.
2. That the Consolidated Rail Corporation violated Rule 34b and 22 when Lineman Bernard Gilliam was improperly dismissed from service on January 15, 1979.
3. That Lineman Bernard Gilliam be restored to service with seniority unimpaired, paid for all lost wages and benefits and all other rights and benefits be restored to him because of the improper dismissal.

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.

During the period between November 28, 1978 and January 5, 1979, Claimant was regularly assigned as a Lineman 2nd Class at Wayne Junction Electrical Department, Philadelphia, Pennsylvania.

Because of his excessive absences, Claimant was notified by letter dated January 5, 1979, to attend an investigation on January 12, 1979, in connection with the following charge:

"Flagrant absenteeism on November 28th (Tues.), Nov. 30 (Thurs.), Dec. 1 (Fri.), Dec. 13 (Wed.), Dec. 21 (Thurs.), Dec. 22 (Fri.), Dec. 23 (Sat.), 1978, Jan. 3 (Wed.), Jan. 4 (Thurs.), Jan 5 (Fri.), 1979 - Total 10 days."

The investigation was held as scheduled. As a result of the investigation, Claimant was notified by Form G-32, dated January 15, 1979, that he was dismissed in all capacities, the "Outline of Offense" reading the same as the charge quoted above.

Ample evidence exists in the record to clearly establish Claimant's culpability in this matter.

"Testimony of Electrical Supervisor G. W. Meyers

Q. Mr. Meyers, on January 3, 1979, Mr. Gilliam stated that he received a call at approximately 9:00 A.M. from Mr. Matzinger. He stated to Mr. Matzinger that he had a cold and was going to see his doctor. Did you receive any doctor's certificate or anything of this nature stating that he was sick?

A. No, I didn't. The reason that I was told was that he had overslept. The phone call was made at 9:10 A.M. and his mother woke him up. Mr. Matzinger was speaking to his mother.

Q. Mr. Meyers, also on January 5, 1979, Mr. Gilliam was off absent, did he call your office or did your Power Dispatcher receive a call?

A. No sir.

Q. Mr. Meyers, do you know if the Power Dispatcher received a call on January 5th?

A. Yes, I called the Power Dispatcher and he received no word from Mr. Gilliam.

Q. Mr. Meyers, about Mr. Gilliam's absence on November 28th, were you advised long before November 28th, somewhere around November 22nd that Mr. Gilliam had a Court appearance?

A. Yes, that conversation took place in my office with yourself attending with the Chairman Harvey Lindenmuth attending and Mr. Gilliam attending and I made the statement that this will be a charge of one day's absence against Mr. Gilliam which could be erased if he brought me the Court Notice of some document showing that he attended Court that day. He did not bring me anything therefore, I charged the 28th of November as a day's absence.

*****"

The Claimant's discipline record, which was incorporated in the transcript shows a history of excessive absenteeism. On February 15, 1978, Mr. Gilliam was charged with being absent a total of 49 days and was assessed 14 days actual suspension. Again, on June 19, 1978, Mr. Gilliam was charged for missing another 9 days for which he was assessed 30 days actual suspension. Then, on September 15, 1978, Mr. Gilliam was dismissed in all capacities for being absent 5 additional days, but he was later restored to service by the Carrier on a leniency basis.

The principle involved in the present issue has been ruled upon by the National Railroad Adjustment Board in various decisions. Excerpts from the Findings of two of those decisions are quoted below:

Second Division Award 5049 - Referee Johnson

"Nothing in the Agreement obligates the carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts."

Second Division Award 6706 states:

"Having established that the Claimant was excessively absent from work, that he had a record of tardiness and early quits, it is quite proper for the Carrier to consider his work record before assessing a penalty. This record establishes without question that the Claimant had had a running poor attendance record for almost all of his term of employment."

The Employees cite Carrier violations of Rules 22 and 34(b) which are contained in the Agreement between System Federation No. 109 and the former Reading Company, effective January 16, 1940. Those provisions state:

"RULE 22 - Reporting Off

In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible. When known, employees are expected to make advance arrangements if necessary to be absent."

"RULE 34 - Grievances and Discipline

(b) No employee shall be disciplined without a fair hearing by designated officer of the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised in writing of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. An employee shall be given a letter stating the cause of any discipline administered; if suspended, the suspension shall date from time taken out of service. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal, such loss being the difference between the amount earned if otherwise employed and the amount he would have earned in his regular assignment."

Rule 22 has little relevance here because the issue is the Claimant's excessive absenteeism and not whether or not he notified the Carrier on the days he was absent. That it would be a misreading of Rule 22 to use it in defense of an employee's excessive absenteeism has been supported by National Railroad Adjustment Board Awards, excerpts from two of which are quoted below:

Second Division Award 7748 - Referee Marx

"The provisions of Rule 22, whatever other purposes they may serve, are not a defense against chronic absenteeism. As held many times before the Board, the employer has a right to expect regularity in attendance."

Second Division Award 7803 - Referee Marx

"As explained in Award No. 7748 and in numerous previous awards, Rule 22 has specified purposes requiring absence reporting but does not, by itself, serve to condone absenteeism -- aggravated in this instance over a period of at least nine months."

As for Rule 34(b), the record indicates the Claimant was given a fair and impartial investigation at which he was represented by a duly accredited organization representative who was permitted to cross-examine witnesses and present evidence on behalf of the Claimant.


Our review of the record concludes that the Claimant was given a fair and impartial hearing and there is no evidence in the record of this case that any action of the Carrier was an abuse of the discretion vested in it or was prejudicial to Claimant's rights. Furthermore, there was no showing during handling on the property that any action of the Carrier denied the Claimant due process or was violative of any rule of the schedule agreement. Moreover, there is no evidence whatever that the Carrier was biased, arbitrary, capricious or unreasonable. Therefore, we must deny the claim.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January, 1982.