

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

1. That under the current and controlling agreement, Laborer L. E. Godfrey was unjustly dismissed from the service of the Seaboard Coast Line Railroad Company on February 8, 1979, after a formal investigation was held in the office of Mr. J. J. McNabb, Conducting Officer, on February 1, 1979.
2. That accordingly L. E. Godfrey, Laborer, be restored to his regular assignment at Tilford Yards with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance, and dental insurance be paid and compensated for all lost time, effective February 9, 1979.

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 respectfully 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, a Laborer at Carrier's locomotive repair facility (Tilford Yards) in Atlanta, Georgia, was charged with violation of Rule 19 of the applicable Agreement, "... being absent without permission and for excessive absenteeism". Subsequent to a formal investigation which was held on February 1, 1979, Claimant was found to be guilty as charged and was dismissed from Carrier's service effective February 9, 1979.

The record shows that Claimant was hired in October of 1976 and that in the calendar year immediately preceding his discharge, Claimant, for various reasons, was absent from work a total of 54 days (approximately 20% of the 255 days which Claimant could have worked in 1978), and, in addition, he was late for work on numerous occasions during that same period of time. The record also shows that throughout his term of employment Claimant received 6 letters of reprimand, 5 of which were for various attendance infractions.

The immediate incident which precipitated Claimant's termination occurred on Wednesday, January 17, 1979, at which time Claimant was assigned to work on the 7 AM to 3 PM shift. At approximately 9 AM on said morning, Carrier received a telephone call from an unidentified woman who said that Claimant would not be at work that day because he was having a tooth pulled, but that he would be back to work on the following day. Claimant, however, did not return to work until January 30, 1979, some 13 days later. In response to a direct question which was posed to him at the investigatory hearing, Claimant acknowledged that he could have contacted Carrier throughout the time of this extended absence, but that he did not do so.

The essence of Organization's position in this dispute is that Carrier's termination of Claimant was unjust because Carrier included several days in Claimant's enumerated absences on which Claimant was ill and had received permission to be off work, and thus was in compliance with Rule 19; and that the Claimant, either himself, a relative or a friend, notified Carrier of each of his absences which, according to Organization, is all that is required by Rule 19. For these reasons, Organization maintains that Carrier's termination of Claimant is excessive and should be overturned.

Carrier's position, simply stated, is that sufficient evidence was adduced in this matter which clearly establishes that Claimant's overall attendance was deficient; that he was disciplined previously for similar infractions, that he was absent without permission from January 18, 1979 through January 29; and that Claimant's "friend's" notification to Carrier that Claimant would not be at work on January 17 came 2 hours after shift start. Carrier further contends that Claimant's admission "... that he could have phoned regarding his absence ... (but) ... he did not do so", demonstrates that he "... simply failed to protect his assignment with complete disregard for the requirements of this Carrier". In summary of its position, Carrier asserts that insofar as Claimant's guilt has been established and no contention has been made that the investigation was improper, then the discipline which was imposed cannot be considered as being unjust, unfair, arbitrary, or capricious, and the instant claim, therefore, should be denied (Second Division Awards 3874, 4401 and 4408).

The Board, upon a complete and careful analysis of the record in this dispute, is convinced that Carrier's ~~dismissal~~ of Claimant was neither improper nor unjust. Though most, if not all of Claimant's previous absences may very well have been as a result of illness or for other legitimate reasons, and though Claimant, his friends or relatives may very well have contacted Carrier and reported his pending absences, the fact remains that said absences, nonetheless, were excessive, and Carrier, within reasonable limits, is not obligated to tolerate such action on the part of its employees. Claimant's previous record and warnings, his very own admissions, and the gravity of his final infraction, taken as a whole, are sufficient evidence of Claimant's guilt and a justification for the penalty which has been imposed by Carrier. Given these determinations, the Board may not and will not substitute its judgement for that of Carrier, and Claimant's discharge, therefore, will remain undisturbed.

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Award No. 8895
Docket No. 8730
2-SCL-FO-'82

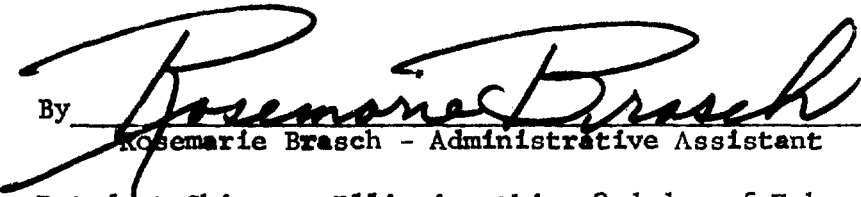
A W A R D

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 3rd day of February, 1982.