

The Second Division consisted of the regular members and in addition Referee Clarence H. Herrington when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Carpenter Phillip Bradshaw was unjustly disciplined when he was assessed 15 days actual suspension and was made to serve an addition 30 days suspension which had been previously deferred on August 16, 1979.
2. Coach Carpenter Phillip Bradshaw was erroneously charged with his absence on July 18 and July 30, 1979, and tardiness on July 16 and 17, 1979.
3. That the Chicago and North Western Transportation Company be ordered to compensate Coach Carpenter Phillip Bradshaw for all time lost (45 days), plus 6% annual interest, and make him whole in accordance with Rule 35.

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.

The Claimant entered service of the Carrier on January 12, 1971. On August 6, 1979, Claimant received notice to appear for formal investigation set for August 15, 1979, on the following charge:

"Your responsibility for your poor attendance when you were tardy on Monday, July 16, 1979; again tardy on Tuesday, July 17, 1979; absent on Wednesday, July 18, 1979, and again absent on Monday, July 30, 1979."

As a result of that hearing, Claimant was given a 15 day actual suspension from August 16, 1979, to September 1, 1979. Claimant, at that time, was required to serve a 30 calendar day deferred suspension from September 1, 1979, to October 1, 1979.

The Board has duly taken into consideration the Organization's letter to this Board dated March 26, 1981, setting forth extensive arguments to Carrier's

including, with its submission, Exhibit B which is a copy of Claimant's past record. The Organization contends this is new material not discussed on the property.

This and other Boards have well established the principle that in determining the degree of discipline, after a violation has been established, a Carrier may take account of an employee's entire record. Not only is it proper to do so, but necessary on grounds of equity and justice. Therefore, the Board holds that none of the Claimant's procedural rights were violated.

The Board has carefully reviewed the entire record, including the transcript of the investigation conducted on August 15, 1979, and finds that the Claimant was afforded a fair and impartial hearing. The record reflects that on July 16, 1979, Claimant called in and advised he would be about 15 minutes late. The records show he was 10 minutes late. On July 17, 1979, Claimant advised that on his way to work he had carburetion trouble with his bike. The foreman's time sheet showed him 10 minutes late. At 7:15 A.M. on July 18, 1979, Claimant called his foreman and advised that he might be in but the records show he never reported. The records reveal that on the evening of July 17, 1979, Claimant's 9 year old son was admitted to the hospital with chest pains. The doctor's finding indicated Eschemia of the heart. Claimant's son was released from the hospital July 24, 1979. On July 30, 1979, Claimant called at 7:00 A.M. and advised he would not be to work due to personal business. The records reflect that the Claimant's automobile had allegedly been vandalized.

The Board has held that a rigid application of Rule 20 involved in this case cannot be justified (see Awards 4227 and 6237). The proper concern of a parent for an injured and/or seriously ill child must permit a liberal approach to the requirements of the Rule. Therefore, we feel some consideration should have been given to the Claimant's absence on July 18, 1979, since his 9 year old son had been admitted to the hospital with a serious heart condition.

After carefully reviewing the entire record, the Board feels that a 7 day suspension in this case would have served its purpose and so hold. The Claimant shall be made whole for the work days encompassed in the remaining 8 calendar day period, less any outside earnings he might have had. The 6 percent annual interest is denied as per a long line of awards.

A W A R D

Claim sustained to the extent set forth 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 10th day of February, 1982.