

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup 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 Cleaner Michael Randolph was erroneously charged with poor attendance account absence on October 16, 17, 29, and 30, 1979; and tardiness on October 26, 1979.
2. Coach Cleaner Michael Randolph was unjustly assessed 30 days actual suspension, and made to serve an additional fifteen (15) days which had been previously deferred, on November 16, 1979, following investigation held November 15, 1979.
3. That the Chicago and North Western Transportation Company be ordered to make Coach Cleaner Michael Randolph whole, with all rights, holidays, and all other benefits that are a condition of employment unimpaired, and compensate him for all lost time plus 6% annual interest on all such lost wages, as per Rule 35(h).

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 held regular assignment as coach cleaner for the Chicago and North Western Transportation Company at its California Avenue Maintenance Facility located in Chicago, Illinois.

On November 2, 1979 Claimant was notified by Mr. W. H. Wonnell, Manager Suburban Operations-Mechanical, to appear for formal investigation on November 8, 1979. In this letter Claimant was advised that the charge placed before him was poor attendance on October 16, 17, 29 and 30, 1979 and tardiness on October 26, 1979. A hearing on these issues was held on this latter date before Mr. D. L. Schmidt, Hearing Officer, with Mr. P. Pilipuf, representative for the Claimant, and witness L. Velazquez in attendance. As a result of the investigation the Claimant, Mr. M. Randolph, was issued discipline Notice No. 83 on November 16,

1979 over the signature of Mr. W. H. Wonnell. Claimant was assessed a 30 day actual suspension; in addition, a 15 day deferred suspension issued to Claimant on October 25, 1979 (Discipline Notice No. 78) was changed to 15 days actual suspension.

The central issues in this case, as they were in an earlier case involving the same Claimant (Award No. 8953) and heard by this same referee, are: (1) did the Claimant, Mr. M. Randolph, meet the general standards for attendance to duty as stipulated by Rule No. 14 of the Carrier, and (2) did he fulfill the specific reporting requirements as stipulated by Rule No. 20 of the Agreement? The transcript of the hearing and the witness of Mr. L. Velazquez show that the Claimant did call in, in accordance with Rule No. 20 of the Agreement, on all dates in question although there is a discrepancy in his testimony and that of the clerk's record of when he called in on October 26, 1979. What is disconcerting to the Board, however, is the Claimant's cavalier interpretation of Rule No. 14 of the Carrier which in no wise is inconsistent with the reporting requirements of Rule No. 20 of the Agreement. Apparently, the Claimant feels that he need not cover his assignment except when he wishes: he states, for example, that he was ill and under medication on October 16, 17, 29 and 30, yet there is nothing in the record to document this. In addition, the Board has gone on record in the past to the effect that no Carrier is required to retain employees who cannot (or will not) perform their work in a dependable manner (See Second Division Awards 5040 and 6710).

Given the circumstances of this case, therefore, re the record as well as Claimant's past history of absenteeism, the 30 day actual suspension assessed the Claimant, which follows by less than a month a 15 day deferred suspension, is consistent with the principle of progressive discipline.

Rule 14 of the Carrier's General Regulations and Safety Rules states:

"Employees must report for duty at the designated times and place. They must be alert, attentive and devote themselves exclusively to the company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

Rule 20 of the Agreement states:

"Employees wishing to be absent from work must obtain leave of absence from the foreman whenever practicable to do so, and foremen will endeavor to grant leave of absence when requested."

A W A R D

Claim denied.

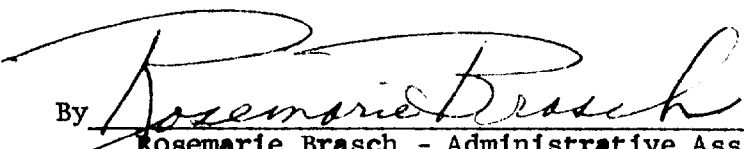
Form 1
Page 3

Award No. 8960
Docket No. 9184
2-C&NW-CM-'82

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 March, 1982.