

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly 16, 17 and 32, when they unjustly dismissed Sheet Metal Worker E. J. Lunnon from service effective November 15, 1977.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to:
 - a) Restore Sheet Metal Worker Lunnon to service with all seniority rights unimpaired;
 - b) Compensate him for all time lost until reinstated;
 - c) Make him whole for all vacation rights;
 - d) Pay all Hospital Association dues and Hospital Insurance for all time out of service;
 - e) Pay the premiums for Group Life Insurance for all time out of service;
 - f) Pay him for all holidays;
 - g) Pay him for all sick pay;
 - h) Pay him for all Insurance premiums;
 - i) Pay him for all jury duty lost.

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.

On October 3, 1977, the Carrier charged Claimant with being absent without proper authority and conduct unbecoming an employee of the Carrier. The notice, which was reissued on November 3, 1977, specifically stated that the investigation would include a review of Claimant's attendance and personnel records. The investigation was duly held on November 10, 1977 and Claimant was dismissed from service on November 15, 1977.

At the commencement of the investigation, the Organization objected to the charge of conduct unbecoming an employee and characterized the charge as vague and imprecise and, therefore, a violation of Rule 32(b) of the applicable agreement. However, at the hearing, the Claimant acknowledged that he had received proper notice. He realized the investigation would address his recent conviction for bank robbery and property theft. In addition, the transcript shows the Organization was well prepared to defend the Claimant on all charges so there was no undue surprise. Second Division Award No. 7817 (Marx). Thus, the notice of charges was sufficiently precise.

Most of the evidence adduced at the hearing was not contested. Though Claimant vigorously denied that he had committed bank robbery, he conceded that he had been convicted of aggravated robbery and theft in an Arkansas Circuit Court on September 16, 1977. The Court imposed a concurrent sentence of six years imprisonment but, at the time of the investigation, Claimant was free on bond pending an appeal. (Subsequently, the Supreme Court of Arkansas affirmed the conviction.) Police and agents of the Federal Bureau of Investigation had arrested Claimant on February 16, 1977 and he was incarcerated in jail until June 3, 1977. He worked for the Carrier from June 3, 1977 until his trial and conviction.

Besides his absence due to imprisonment for three and one-half months in 1977, Claimant had a poor prior attendance record. From February, 1975 until February, 1977, Claimant was absent approximately thirty-four times without either obtaining prior permission or reporting off properly. On several occasions, the General Foreman counseled the Claimant by emphasizing his duty to regularly protect his assignment and the urgent need to improve his attendance record.

The carrier proffered substantial evidence to support a finding that Claimant had engaged in wrongful conduct discrediting the reputation of the Carrier and that Claimant had been excessively absent without proper authority. Claimant was not charged until after he had been convicted of a heinous felony. Local newspapers had identified the Claimant, upon his conviction, as an employee of the Carrier. Claimant had also accumulated a long list of unexcused absences. The Carrier must rely on its employees to regularly report to their assignments. Railroad operations are effectively disrupted when employees fail to attend to their work. In this case, Claimant's attendance record did not improve in spite of good faith counseling by the Carrier's General Foreman. Furthermore, long periods of absence because Claimant is confined to jail are simply inexcusable.

Claimant's felony conviction coupled with his numerous absences without proper authority justifies a severe penalty. Therefore, we cannot substitute

Form 1
Page 3

Award No. 8962
Docket No. 8183
2-MP-SM-'82

our judgment for the carrier's decision to dismiss the Claimant.

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 10th day of March, 1982.