

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. Lee A. Watson when they removed him from service as a result of an investigation held on February 7, 1979.
- (2) That, therefore, Mr. Watson be restored to service with all rights, privileges and benefits he would have earned had he not been unjustly removed from service.
- (3) Further, that he be compensated for all lost time, including overtime and holiday pay and that such lost time be counted as vacation qualifying time.

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, an engine washer, employed May 16, 1977, was removed from service on February 21, 1979, for violation of Rule 13, General Rules for the Guidance of Employees, Form 2626 Standard, being off duty in excess of ten (10) calendar days since December 15, 1978, and absence not covered by formal leave of absence. A formal investigation was held February 7, 1979. Neither the Claimant nor a designated representative attended.

The Organization objects to the failure of Carrier to grant a two week postponement of the investigation. Additionally, it asserts the discipline was harsh and excessive. According to the Organization, the Carrier was aware of Claimant's injury and gave no consideration to this fact.

The Carrier raises the procedural objection that certain exhibits (O through U) attached to Organization's submission are not properly before the Board. There is no foundation that these documents were introduced in the proceedings on the property and cannot now be considered by the Board.

The Claimant was on a leave of absence through and including December 14, 1978. He was admitted to Martin Luther King, Jr., Hospital on December 4, 1978, and dismissed on December 20, 1978. He was readmitted on January 2, 1979, and dismissed on January 26, 1979.

On January 29, 1979, the Claimant received, by certified mail, a copy of Carrier's letter scheduling February 7, 1979, for a formal investigation. Approximately one hour prior to the start of the investigation on February 7, 1979, he called the Carrier to request a postponement, which was denied. The Claimant had timely opportunity to request the postponement prior to the investigation. There is no showing he advanced a valid reason for the request on February 7 or that he was physically incapable of attending the investigation.

The Carrier has proven the Claimant did not secure an extension of his leave of absence which expired December 14, 1978. The Claimant was responsible for being absent without authority. Careful examination of the record clearly establishes the Claimant was in contact with the Carrier during his absence, and insurance forms were sent by the Carrier to the Claimant at the hospital. No request for a leave of absence is established. The Carrier was aware of the Claimant's two hospital confinements and the fact he was under doctor's care up to and including the time of investigation.

Despite the Carrier's proving the charge against Claimant, we conclude that in view of the mitigating circumstances the penalty of dismissal was unduly harsh. The Claimant should be reinstated with all seniority credits he held on February 21, 1979, but without back pay. The Claimant must, in the future, carry out his employment obligations and duties diligently. This requires compliance with the General Rules, specifically, Rule 13. Employment is a valuable right, which must be protected by acting in accordance with job requirements.

A W A R D

Claim sustained in part, as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.