

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when Electrician Patrick R. Harrington was unjustly suspended from his position from June 28, 1979 thru July 27, 1979 for alleged failure to protect his assignment.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician P. R. Harrington whole by repaying him for all lost wages and benefits resulting from his thirty day suspension and by having his record cleared. Mr. P. R. Harrington would have earned \$1,552.48 as Electrician's compensation had he not been suspended from June 28, 1979 thru July 27, 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 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.

Claimant, Mr. Harrington, was charged with excessive absenteeism. An investigation was conducted on June 1, 1979, and following that hearing the penalty herein complained of was assessed.

At the outset the Organization raises the defense of procedural error. In so doing it points to the following alleged errors:

1. The charges were not precise enough to prepare defense. We find this claim lacks merit. Mr. Harrington was charged with absence without proper leave and the exact dates were included.
2. The Carrier erred in assessing penalty because the letter of discipline stated in pertinent part:

"As a result of your absenteeism for failure to protect your assignment."

The Organization points out that the charges did not contain the words failure to protect your assignment. This Board is aware of the necessity to carefully review the charges in order to determine guilt or innocence and protect Claimant's rights. However, in the case at bar, if the aggrieved party is found guilty as charged we find it difficult to determine how his rights were affected by the inclusion of the words "failure to protect assignment" included in the letter of discipline. If Claimant was absent from work it simply follows that his assignment was not protected. Such a claim lacks merit in this case.

3. The hearing was not fair and impartial because the hearing officer acted as a witness. A review of the record reveals that the hearing officer read into the record the fact that the company had a Phone and Message record which indicated that Claimant had not called in. The simple reading of a factual statement does not constitute personal or biased testimony. Claimant's rights could hardly be jeopardized by a statement of fact.

We find that the investigation was conducted in accordance with contractual requirements and past practice.

The record is clear. Claimant was absent from work on five days during the month of April, 1979. There is no credible evidence that he called in on the days in question as required by the Rule. Mr. Harrington testified that the reasons he was absent were personal and he had not discussed his absences with his supervisor because they came up suddenly. One can readily recognize the mischief that might accrue to the contract if an employee were permitted not to call in because the reasons were personal.

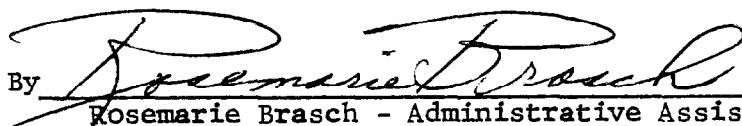
Based on the foregoing and the entire record we find that Claimant was guilty as charged. A review of his past record reveals that his previous actions with respect to absenteeism were far from exemplary. We, therefore, have no alternative but to uphold the decision of the Carrier.

A W A R D

Claim denied.

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.