

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Elgin, Joliet and Eastern Railroad Company

Dispute: Claim of Employees:

1. That Laborer Cedric J. Randolph was unjustly dismissed from service by the Elgin, Joliet and Eastern Railroad.
2. That accordingly, the Elgin, Joliet and Eastern Railroad be ordered to return Laborer Randolph to work immediately, with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest. We further request reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service.

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. Randolph, was notified by letter to appear for an investigation on March 7, 1980 to develop the facts and responsibility in connection with the following:

- "1) Your alleged failure to report for duty at 4:00 PM at Kirk Yard Roundhouse, Gary, Indiana, on Wednesday, February 13, 1980.
- 2) Absenting yourself from your assignment under the alleged false pretense of illness since February 14, 1980.
- 3) Conduct unbecoming an employee in that you were arrested at approximately 11:00 A.M., Wednesday, February 13, 1980 for an alleged armed robbery."

At the request of the Organization, the investigation was postponed and eventually held on March 17, 1980. Following that hearing the penalty herein complained of was assessed. There is no dispute with respect to the facts in this case. Claimant was apprehended with others by a police road block after

a chase of some length. He was incarcerated in the jail at Hammond, Indiana, on charges of participating in armed robbery. This event took place on February 13, 1980 and Mr. Randolph remained in jail until March 8, 1980, when bond was posted. On the morning of February 14, his mother called in to report that Claimant was ill and would not be at work. She repeated the same type call on February 20. During this period of time, Mr. Randolph made no effort to contact the Carrier.

The gravaman of the Organization's defense resides in its view that Claimant was unavoidably detained from work and he has not been judged guilty since a trial has not been held. Further, it claims that Mr. Randolph did not falsify the reason for absence since his mother made the call. While it may be true, as claimed by the Organization, that Claimant could not call the Carrier on the evening of February 13, as he was only allotted one call and that was made to his family, there is no claim that he could not have contacted the Carrier on the following day or any day thereafter. Mr. Randolph cannot hide behind the well intentioned actions of his mother to excuse his own failure to report absence as required by the contract.

Claimant was absent from his assignment February 13, 1980 to March 12, 1980. During this period of time no real effort was made to inform the company as required by the agreement. It is clear that Mr. Randolph was absent for a considerable period of time without excuse or notification as charged. Such actions have long been held by this Board to be a dismissable offense. Claimant had been employed by the Carrier for approximately one year and during that period of time his record was far from exemplary. In view of the foregoing and the entire record we find that the Carrier was within its legal rights in assessing the penalty.

Since the foregoing is sufficient to justify the penalty we need not burden the record with comment on Charge No. Three.

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.