

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current agreement Fireman and Oiler B. E. Fairbee, was unjustly dismissed from the service of the Carrier on November 9, 1978, following a hearing held on October 31, 1978.
2. That accordingly, the Carrier be ordered to make the aforementioned B. E. Fairbee, whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, customs or law and compensated for all lost wages. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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, a Fuel Truck Attendant with service date of May 4, 1978, at Carrier's yard facilities at San Jose, California, was charged with "... alleged unauthorized absence from your regular assignment October 23, 24, and 25, 1978." Pursuant to an investigation which was held in absentia on October 31, 1978, Claimant was adjudged guilty as charged and was dismissed from Carrier's service effective November 9, 1978. Said dismissal is the basis of the instant claim.

Organization's basic position in this dispute is that Carrier's dismissal of Claimant was an unjust action since Claimant had good reason for his absence in that he had to return home to Akron, Ohio because "his parents were ill". Additionally, Organization further contends that Claimant personally informed the Yardmaster of his intended actions who in turn relayed this information to Claimant's Supervisor. Organization thus argues that, given the foregoing, Claimant's three days absence was not unreasonable and that Carrier's subsequent

dismissal of Claimant was much too severe a penalty to assess (Second Division Awards 1157, 1189, 1191, 1215, 1513, and 4132).

Carrier's position, in the main, is that Claimant's termination was proper because: (1) there is no dispute that Claimant was absent as charged; (2) said absence was without proper authority; and (3) Claimant's continuing absence and his failure to appear at his own investigation hearing clearly warrants the conclusion that Claimant is not even serious about continuing his employment relationship with Carrier. As support for the foregoing Carrier asserts that Claimant did not have the right to merely inform the Yardmaster that he was taking "time off"; and that by engaging in such action Claimant committed a serious infraction which is more than adequate grounds for permanent dismissal (Second Division Awards 3874, 6285, and 6465; Third Division Awards 14601, 16860 and 19791; and Fourth Division Award 2595).

Carrier's final significant area of argumentation in this dispute is that Claimant's belated written excuse does not support Claimant's original contention as presented by Organization since Claimant had approximately from October 23rd to the 27th to contact his supervisor and request a leave of absence before the investigation but he failed to do so; and that Claimant is not interested in retaining his position with Carrier since Carrier, through the Organization, offered Claimant conditional reinstatement, provided Claimant's excuse could be substantiated, but Organization could not even get Claimant to respond to its inquiries.

Upon a complete and careful review of the entire record which has been presented in this matter, the Board is of the opinion that Claimant's Organization's position cannot be supported and thus the claim, as presented, must fall. The aforesaid conclusion, for the most part, is predicated upon the fact that Claimant's account of the incident is either inconsistent or is inaccurate in several critical aspects.

In this regard, the record shows that Claimant's last day of work was Friday, October 20, 1978, and that Claimant picked up his pay check on the night of October 24, 1978, at the San Jose Yard Office. However, Claimant, in his letter to Carrier, indicates that "I Boyd Fairbee on Sunday 10-20-78 was called home for emergency reasons" and "I intended to call Monday (10-21-78) but was tied up, and it slipped my mind with other matters going on."

Not only does the foregoing indicate that Claimant is apparently in error, regarding certain of the details concerning his absence; but, more importantly, such a revelation clearly indicates that Claimant, by his own account, remained in San Jose either five days (20th through 24th) or three days (Sunday through Tuesday) during which period of time Claimant could have--should have contacted Carrier, reported his anticipated absence, and requested leave. Such a failure on Claimant's part is inexcusable and Claimant must now suffer the consequences of his dereliction. Under these circumstances, the penalty of discharge is not an unreasonable penalty to assess, and any determination regarding the extension of leniency in such a situation must be initiated by Carrier and cannot properly be directed by the Board.

Form 1  
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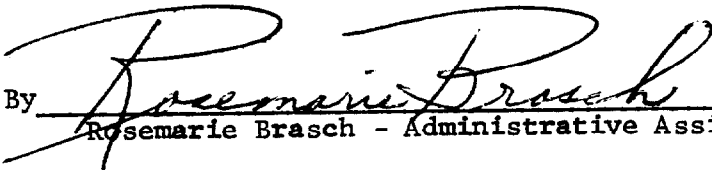
Award No. 9077  
Docket No. 8695  
2-WP-FO-'82

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 19th day of May, 1982.

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