

The Second Division consisted of the regular members and in addition Referee Thomas V. Bender when award was rendered.

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

Dispute: Claim of Employes:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when Electrician Helper D. Paprota was unjustly dismissed from service on November 1, 1979 for alleged failure to protect his assignment.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician Helper D. Paprota whole by reinstating him to service with all seniority and other rights unimpaired and repaying all lost wages and benefits and his record cleared.

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.

The Claimant in this case was employed by the Carrier on August 7, 1978 and terminated for excessive absenteeism on November 1, 1979.

On June 20, 1979 the Claimant was advised by letter that his attendance record was not up to acceptable standards. This letter advised the Claimant that unless his record improved, discipline would follow. Apparently, the warning did some good for the Claimant's record did improve, even if for only a short time.

On September 19, 1979 the Claimant called in sick. On October 1, 1979 the Carrier sent a letter requesting information as to the Claimant's condition or directing him to return to work on October 6, 1979. Following this request, nothing was heard from the Claimant.

The Claimant was noticed for an investigation on October 10, 1979. The investigation was to be held on October 17, 1979, but was postponed until October 24, 1979. The Claimant did not appear for the investigation.

On appeal to this Board, the Organization raises two issues:

1. That the investigation was unfair because the Claimant was not present and his representative was excused.
2. That the Claimant's termination should be set aside because the discipline is not supported by the record.

The procedural issue raised by the Organization is without merit. Since the Claimant chose to absent himself from the investigation, it would have been difficult for his representative to strongly argue how important the job is to the Claimant. Moreover, the Claimant's representative had almost two weeks to prepare for the investigation. If there were extenuating circumstances the representative would have brought them to the attention of the hearing officer. However, no statement was made. Moreover, a review of the appeal letters does not disclose what, if anything, the Claimant's representative planned to do at the investigation. And, if that representative had information bearing on the case he was duty bound to present it. The mere fact that an allegation that prejudice resulted from incident/omission is insufficient to carry the case. What information did the Claimant's representative have to add to the Carrier's deliberations? Without the answer to that question, no finding of prejudice can be made by this Board.

The Claimant's attendance record subsequent to June 20, 1979 shows:

| <u>Date Absent</u> | <u>Reason For Being Absent</u> |
|--------------------|--------------------------------|
| September 19, 1979 | Called in sick |
| September 20, 1979 | No call - No reason given |
| September 21, 1979 | No call - No reason given |
| September 24, 1979 | No call - No reason given |
| September 25, 1979 | No call - No reason given |
| September 26, 1979 | No call - No reason given |
| September 27, 1979 | No call - No reason given |
| September 28, 1979 | No call - No reason given |
| October 1, 1979 | No call - No reason given |
| October 2, 1979 | No call - No reason given |
| October 3, 1979 | No call - No reason given |
| October 4, 1979 | No call - No reason given |
| October 5, 1979 | No call - No reason given |
| October 8, 1979 | No call - No reason given |
| October 9, 1979 | No call - No reason given |

The record of the investigation contains no evidence which would explain the Claimant's prima facie poor attitude toward his employment responsibilities. Given this overwhelming evidence this Board has no option but to sustain the discipline imposed. It is well settled by a long line of authority that when the record contains substantial evidence this Board may not substitute its judgement for that of the Carrier. The exception to this rule relative to arbitrary and capricious imposition of discipline has no application in this matter.

Form 1
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Award No. 9157
Docket No. 9205
2-CMStP&P-EW-'82

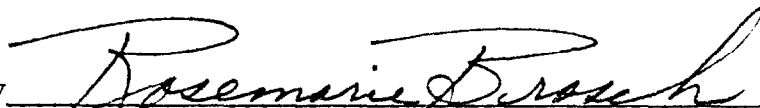
A W A R D

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 30th day of June, 1982.