

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Laborer S. O. Henderson was unjustly dismissed from service of the Carrier following trial held on June 6, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned S. O. Henderson whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10% percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been 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.

The claimant was employed as a laborer by the carrier on January 22, 1979 and assigned duties at the Avon Diesel Terminal, Avon, Indiana.

On June 8, 1979, after a proper trial, he was dismissed on a charge of "Absenteeism", citing absences on: April 18, 19, 21, 24, 25, 26, 27, 28; May 1, 2, 3, 4, 10, 11, 12, 15, 16, 17, 18, 19, 22, 1979.

The employe organization bases its appeal from this decision on the following grounds:

- A) That the claimant was not given proper and sufficient warning advising him of his poor attendance record. It is alleged that, "It is a policy at Avon Diesel Terminal to advise an employe with three written warnings before the carrier could have a trial on an employe".

- B) That this was the claimant's first offense and therefore he should be allowed a second chance with which to redeem himself. Further it is asserted that the claimant has learned his lesson and has and will correct his work habits.
- C) That the punishment meted out was excessive and unwarranted.

Dealing with these points seriatum:

It is a principle well established, of long standing and well understood by the parties that the Board may not go beyond the issues raised on the property during the handling of the dispute. In this case the question of proper and sufficient notice was never raised during the investigation or trial. It first surfaced on the record June 29, 1979 during appeal. Thus, without ruling or speculating on the validity of the alleged policy or its application herein the Board must exclude this issue from consideration.

With respect to the question of leniency because the claimant was dismissed on a first offense and should be allowed another opportunity unfortunately the offense was not an isolated occurrence but of a continuing nature and so egregious that such appeal deserves scant merit. The claimant was absent one third of his scheduled working time, thirty (30) out of ninety (90) days, and worked only part of nine (9) additional days. Moreover even after notification on May 24 of the impending action to be taken against him the claimant's record of absences and latenesses entered in evidence at the trial, reveals that he was in violation on seven (7) out of eight (8) subsequent scheduled days. This record should also refute the assertion that the claimant has learned his lesson and has corrected his working habits.

Based upon such a record the dismissal of claimant was certainly warranted and not excessive punishment especially since unrefuted and unchallenged testimony characterized the absences to be unexplained, unrequested and without notification. Moreover the claimant did not give assistance to the representative who conducted his defense and did not attend his trial or appeal. While the carrier's conclusion that this latter action is an admission of guilt is not necessarily valid, certainly his indifference to the outcome is indicative of past attitude and future prospects of reform.

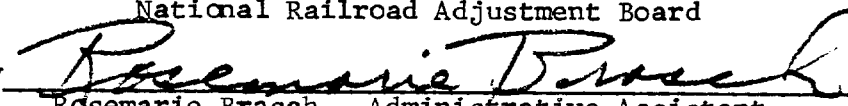
Excessive absenteeism is a serious offense worthy of dismissal and such action is proper and fitting in this case.

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 22nd day of July, 1982.