

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did unjustly dismiss Carman Robert W. Partee from the service of the railroad on June 15, 1979 as result of hearing held on May 16, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Carman Robert W. Partee to service with seniority rights unimpaired.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Carman Robert W. Partee whole for all rights and benefits that are a condition of employment such as, but not limited to, seniority, vacation, holidays, medical, surgical, dental and life insurance benefits during such time as he is held out of service.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman Robert W. Partee for all lost time as result of his unjust dismissal from the service of the Carrier.
5. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to award Carman Robert W. Partee interest at the 6% rate per annum for any and all payment he may receive as result 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 employees 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 carman welder at the Milwaukee, Wisconsin Freight Shop for a period of approximately nine (9) months. A hearing was held on May 16, 1979 to investigate the charges of failing to protect assignment and failure to report to work on time. Following the hearing the claimant was terminated on June 15, 1979.

The Employee's Organization asserts that he was denied a fair and proper hearing since the claimant was not present at the hearing and a requested postponement until such time as he could be present was denied. It is alleged, moreover, that he did not receive adequate notice of the hearing.

Further the Employees assert that the claimant had a legitimate excuse, psychotherapy, for absences on two (2) dates and might have justified other absences and/or latenesses had he been present to testify. Also it is asserted that the discipline meted out is punishment rather than correction.

In reviewing the entire transcript and supporting documents the Board notes that the instant case is not the first time the claimant has had a hearing relative to excessive absenteeism and lateness. In fact, only two months earlier he had been warned and counseled at a hearing for the same offenses.

In this instance he had been notified by certified mail of the hearing by letter of May 4. Also he had been handed, in person, a letter on the property by his Foreman on May 10. While a certified letter might have gone astray as the claimant asserts, the same cannot be said of a letter delivered into his hands. Thus he had a minimum of six (6) days within which to prepare for his hearing, to personally request a postponement or to contact his representative to arrange a later hearing. He did none of these and absented himself from the hearing.

His absence does not preclude conducting a proper hearing, as has been well established by the Board in numerous cases of which the following are cited:

Third Division, Award No. 13941:

"There must be a termination to an adversary proceeding and the parties bear the responsibility of protection of their respective interests. The situation herein presented is analogous to a party failing to appear at a trial in a civil action set for a day certain, whereupon the court enters judgement on the pleadings or ex parte evidence. We find, in light of the facts of record, Carrier did not violate the Agreement in proceeding to decision in the absence of Claimant."

Third Division Award No. 22408:

"An employee cannot prevent the holding of a fair and impartial hearing by the simple expedient of staying away after due notice has been made without proof that the absence was justified."

Second Division Award No. 5987:

"When claimant failed to appear at the hearing ..., after having been properly served with notice, he acted at his peril; and Carrier's proceeding with the hearing in his absence was not a denial of due process."

The Board in this case reaffirms the above awards.

With respect to reasons for his latenesses and absenteeism, testimony at the hearing referred to a document read into the record which the claimant had delivered to the Carrier on May 10. It states:

"To Whom it may concern.

I have examined Mr. Robert Partee on 4/25/79 and again on May 10, 1979. There are no mental health problems which would prevent him from carrying out his responsibilities as a welder at this time.

Signed, Paul K. Wehmeier  
Psychotherapist"

Thus whatever problems, if any, the claimant experienced they were not mental problems. Further the therapist said he had "examined" the claimant, not treated him; therefore "psychotherapy" was not a legitimate excuse for his absence at the hearing and there is no evidence that it is related to his work record.

This employee's work record is strewn with frequent absences and latenesses. For such a short term employee the Carrier has a right to expect a far more serious effort to protect his assignment and to report for work on time. Having been warned and counseled prior to his most recent dereliction the discipline assessed is right and proper and his claim is without merit.

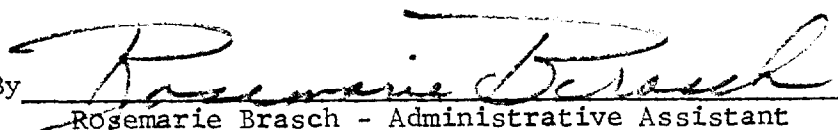
A W A R D

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.