

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 Coach Cleaner Michael Mosely from the service of the Carrier on April 20, 1979 as result of a hearing held on April 6, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Coach Cleaner Michael Mosely to the service of the railroad with all seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reimburse Coach Cleaner Michael Mosely for all losses sustained account loss of coverage under health, welfare and life insurance agreements during the time held out of service.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Coach Cleaner Michael Mosely for all lost time plus 6% annual interest.

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 on July 19, 1978, as a coach cleaner at the Western Avenue Coach Yard facilities of the carrier in Chicago, Illinois. He was discharged from service on April 20, 1979, after a hearing on April 6, 1979.

The claimant was dismissed on charges of (1.) failing to protect his assignment on five (5) days in February and March, 1979 and (2.) failing to notify his foreman within a reasonable length of time that he would be unable to protect his assignment on three of those days.

The employe argue that the claimant was unjustly dismissed inasmuch as (1.) he was not afforded a fair and impartial hearing to which he was entitled; (2.) claimant had valid reasons for certain of his absences; (3.) the carrier has not met the required burden of proof; (4.) even if guilty the claimant should have been disciplined short of discharge.

The Board finds none of the above arguments of the employes on behalf of the claimant to be persuasive of overturning or lessening the judgement meted out.

The claimant was fairly tried and despite the claimant's assertions of legitimate excuses the burden of proof was fairly sustained.

At the hearing, copies of violation notices were introduced which were signed and acknowledged by the claimant. They showed a continuing pattern of latenesses and absences stretching back over eight (8) months and totaled twenty-four (24) latenesses and nineteen (19) absences for a variety of reasons. Moreover the claimant had been counseled by his supervisor, advised that a continuance of this behavior would result in discharge and had been warned most recently on February 8, 1979, that he was being given "another opportunity to improve..." And he was cautioned, "If you fail to do so, you will subject yourself to disciplinary action which possibly may result in your dismissal."

Four (4) days later, there occurred the first of the five (5) offenses cited at his hearing which resulted in the claimant's dismissal. It is noteworthy also that for this offense of February 12 the claimant was unable to offer any reason or excuse for his lateness of 30 minutes and failing to notify his foreman as required.

Such a gross record of inattendance and disregard for the carrier's needs with respect to manning is a serious matter and certainly a dischargeable offense. The employe in this case shows no evidence that his behavior is corrected or correctable by a lesser penalty and therefore the judgement will stand.

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.