

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister 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 remove Carman Shelley Epstein from service on June 15, 1979 at 2:15 P.M. prior to her hearing on July 2, 1979 and did unjustly terminate her from service on July 24, 1979.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Carman Shelley Epstein to service and to make her whole for all rights and benefits that are a condition of employment such as, but not limited to, seniority, vacation, holidays, medical, dental, surgical and all group insurance benefits.
3. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman Shelley Epstein for all lost time as result of her unjust dismissal from service June 15, 1979 until she is restored to service.
4. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to reimburse Carman Shelley Epstein for all losses sustained account loss of coverage under health, medical, welfare and life insurance benefits during such time as she is held out of service.
5. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to pay Carman Shelley Epstein interest at the 6% rate per annum for any and all payment she 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 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, a Carman Welder, was employed by the Carrier on August 9, 1978. Notice was given Claimant that a hearing would be held on June 20, 1979. Two postponements were granted Claimant, and hearing was held on July 2, 1979, to

determine her responsibility in connection with the following charges:

- "1. Failure to protect assignment of June 1 and 4, 1979.
2. Failure to report to work on time on April 25, May 2, 16, 17, 21, 29, 30, June 11, 1979.
3. Absence from assigned job without proper authority on May 4 and 18, 1979.
4. Failure to perform assigned task in a reasonable length of time on February 13, March 14, June 11 and 12, 1979, in that your work performance was substandard."

On June 15, Claimant was suspended from service. Carrier advised Claimant by letter dated June 18, 1979, that two additional charges would be added to the original notice of hearing. They were:

- "1. Failure to report to work on time on June 15, 1979.
2. Failure to perform assigned task in a reasonable length of time on May 15 and June 15, 1979."

Following the hearing, a letter dated July 24, 1979, informed Claimant she was being dismissed from service effective that same date.

The Organization objects to Claimant's removal from service on June 15, 1979, prior to the hearing and contends that the evidence presented was neither clear nor convincing and did not substantiate Carrier's charges that Claimant was in violation of the cited rules.

This short term employee's record reveals she received a letter of warning at the end of February advising her she was not meeting the requirements of her job in being absent eight times and tardy on thirteen other occasions in the six month period, September through February. In early April, Carrier notified Claimant to appear for a standard hearing on April 19, 1979, to determine her responsibility for twenty additional days of absence. No action was taken as a result of the hearing.

A careful review of the lengthy investigative transcripts and all documents in evidence reveals a few areas of unclear testimony. Essentially, the Board is faced with the denials of Claimant as opposed to the cumulative and detailed testimony of Carrier's supervisory personnel. It is not for this Board to evaluate and resolve factual disputes. The Hearing Officer, observing the demeanor of witnesses, is the proper authority to weigh testimony. The Board is satisfied that in this case the manifest weight of the evidence substantially upholds the Carrier's charges and discipline imposed.

A W A R D

Claim denied.

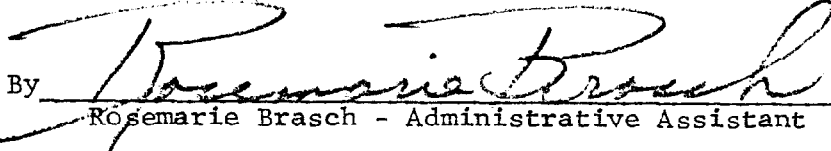
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Award No. 9223
Docket No. 8991
2-CMStP&P-CM-'82

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.