

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when it unjustly dismissed Electrician Lucas Torres, Jr. from service on June 11, 1980 for alleged failure to protect his assignment.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician Lucas Torres, Jr. whole by reinstating him to service with all seniority and other rights unimpaired and compensating him for all lost wages and clearing his record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant entered the employ of Carrier as an Electrician on August 25, 1979 and, at the inception of this dispute, was working in that position at the Carrier's Diesel House in Bensenville, Illinois. On May 16, 1980, the Carrier sent Claimant a letter notifying him to report for formal investigation on May 23, 1980.

As a result of the investigation held on May 23, Claimant was dismissed effective June 11, 1980. He was in service for approximately eleven months.

The Organization has taken the position that the claim should be sustained inasmuch as the decision was arbitrary, capricious, the Claimant was innocent of the charges and the Carrier failed to meet its burden of proof. It specifically argues that the record evidence reveals that the Claimant was absent for good cause, that since he was unavoidably kept from work based on an ankle injury, which he proved with a physician's statement, from April 2 through April 11, 1980; and because of a motorcycle accident from April 19 through April 23, 1980.

According to the Organization, Rule 16 states in pertinent part:

"An employe detained from work on account of sickness or for any other good cause, shall notify his foreman as soon as possible."

The Organization takes the position that Claimant did in fact notify the Carrier as early as possible about his injuries and absences from work. Since the Claimant was unavoidably kept from work, and complied with Rule 16 of the Agreement by notifying Carrier of his injury and absence as soon as possible, Claimant has been unjustly disciplined.

The Carrier submits that the Claimant was properly notified of the matter with which he was charged; he was given a fair and impartial hearing as provided for under the current rules agreement; the testimony given at the hearing supports the charges that were preferred against the Claimant. In taking into consideration the seriousness of the proven charges, as well as the Claimant's unsatisfactory past record of absenteeism and tardiness for which he had been warned and the fact that the Claimant had been in Carrier's service but a short time (eleven months), the disciplinary action taken was warranted and justified.

Upon a thorough examination of the record, the Board concludes the Claimant received a fair and impartial investigation in strict accord with Rule 35, the applicable discipline rule contained in the Controlling Agreement. Claimant admits to not protecting his job assignment on the dates involved and that he only called in on two of those dates, i.e. April 2 and 21, 1980. On eight of the above dates that Claimant was charged with being absent from his job assignment, i.e. April 3, 5, 6, 9, 11, 19, 20 and 23, he did not notify his foreman that he would be absent.

In connection with the charge of tardiness, the record evidence reveals that on April 16, Claimant called in that he would be two and one-half hours late but gave no reason for his delay and on April 18, Claimant was thirty minutes late and did not call in and gave no reason for the delay.

The Board finds the summarized evidence overwhelmingly substantial with regard to Claimant's excessive days of absenteeism without valid reason and with regard to Claimant's non-compliance with Rule 16 of the controlling agreement. Numerous prior awards of this Board have set forth the principle that absenteeism is serious and that excessive and habitual failure to report to an assignment is sufficient grounds for dismissal. (For example see Second Division Awards 7348, 8216, 8523, 8238 and 8546.) The Carrier can hardly maintain normal operations unless its employees regularly report to work. Second Division Award 7870 (Roukis).

In applying these principles to this case, the Board finds on the merits that the Carrier's findings are based upon substantial and credible evidence. The record reflects Claimant was afforded two opportunities in his short work tenure to improve his absentee record, but to no avail. We cannot find that any procedural or substantive rights of the Claimant were violated. Therefore, we will deny the claim.

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Award No. 9364  
Docket No. 9305  
2-CMS tP&P-EW-'83

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 26th day of January, 1983.