

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Kentucky and Indiana Terminal Railroad Company

Dispute: Claim of Employees:

1. That Carman M. W. Barr was dismissed from service in violation of the current agreement on November 20, 1979, and
2. Accordingly, the Kentucky and Indiana Railroad should be ordered to:
  - (a) Restore him to service with seniority and all employee rights unimpaired.
  - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
  - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from 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 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, a Carman with seniority date of August 1, 1967 at Carrier's Switching and Terminal facility in Louisville, Kentucky, was terminated for failing to protect his assignment on the night of November 14, 1979 from 11:00 p.m. to 7:00 a.m. According to the record, Claimant had reported off work on the two (2) previous work days, November 12 and 13, 1979, because his "leg was hurting". At approximately 11:50 a.m., on November 14, 1979, however, Claimant's Supervisor, Master Mechanic D. L. Sparks, encountered Claimant away from the property and inquired of Claimant if he would be at work later that evening. Claimant allegedly responded "... that he would definitively (sic) be in that night to protect his assignment". No such appearance, however, was made.

Pursuant to an investigation which was held on November 20, 1979, Claimant was adjudged guilty as charged and was terminated from Carrier's service effective that same day.

Claimant's position in this dispute is that at approximately 10:30 p.m. prior to his shift start on the evening of November 14, 1979, he telephoned the supervisor's office and reported that he would not be at work that evening. Claimant maintained that in this conversation he talked with Mr. Haesler, the Roundhouse Foreman; although Claimant later testified that he could not "(V)erify who (he) was speaking to ... (because he) ... didn't catch the voice". Claimant further maintained that early on the following morning, November 15, 1979, his wife telephoned Carrier and reported that she had forgotten to contact Carrier on the previous evening to report that her husband would be absent. According to Claimant, his wife "... contacted him (General Foreman G. Schaefer) as soon as she came to it or it came to her, and she tried to explain that to him that she would have called earlier but she did not know and was not aware that I (Claimant) had previously reported off ..."

Carrier asserts, however, that neither Claimant nor his wife contacted any supervisor prior to shift start on the evening of November 14, 1979, and that at approximately 7:10 a.m. on the following morning, November 15, 1979, Claimant's wife telephoned Foreman Schaefer and reported that "... she forgot to report (Claimant) off the night before ... and she wanted to report him off now (and) that he was taking some kind of medicine that made him sick last night."

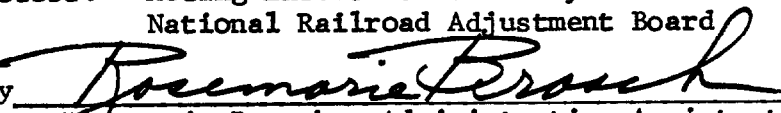
Without probing the details of this case further or offering a recapitulation of the various arguments which have been presented by the parties in support of their respective positions, suffice it to say that Claimant's numerous inconsistencies regarding several critical elements of his testimony assuredly brings into question the credibility of Claimant's entire defense. There can be no doubt that the foregoing determination, when viewed in combination with Claimant's abominable attendance record (to say nothing of innumerable disciplinary actions for previous attendance related violations and Claimant's two previous conditional reinstatements "on a leniency basis"), is sufficient evidence upon which to uphold Carrier's action herein. (First Division Awards 13142, 14014 and 14554; Second Division Award 7348; Third Division Awards 891, 4961, 5034, 5401, 5745, 12492, 13481, 16244, 18362 and 20653; and Award No. 30 of PLB 995 and Award No. 1 of PLB 1867). Indeed, under the circumstances, to do otherwise would be an absolute travesty which the Board will not consider -- not even for an instant!

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 16th day of March, 1983.