

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Sheet Metal Workers International Association
Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement, Sheet Metal Worker Helper J. H. Banks was unjustly discharged from service on October 31, 1979.
2. That accordingly the Carrier be ordered to re-instate the aforementioned employe to service with all rights un-impaired, including seniority, vacation, health & welfare benefits and life insurance.

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.

Claimant, a pipefitter helper, was charged with being excessively absent during September, 1979. At the subsequent investigation held on October 11, 1979, the Carrier offered evidence demonstrating Claimant was absent seven of his assigned work days during September. However, the Carrier conceded that Claimant was absent because he was suffering from a bona fide illness on four of the seven days. On October 31, 1979, the Carrier dismissed Claimant from service.

Claimant did not adequately explain his absences on September 14, 20, and 21, 1979. While Claimant testified that he was attempting to procure medication to treat his stomach disorder on those three dates, even Claimant's doctor was not certain that Claimant's illness actually prevented him from working.

The Organization argues that dismissal was an arbitrary and excessive penalty for only three days of unexcused absence. The Carrier contends it relies on Claimant's prior discipline record which showed Claimant had been disciplined for this same offense four times.

After carefully considering the positions of both parties, we rule that the assessed penalty was not commensurate with the seriousness of the proven offense. The record reveals and the Carrier acknowledges that Claimant had a legitimate justification for a majority of his absences during September, 1979. Therefore,

we will reinstate Claimant to service with his seniority unimpaired but without back pay. At the same time, Claimant's prior record compels us to give him a final warning. Upon his reinstatement to service, Claimant must improve his attendance record. Further instances of excessive and unexcused absence will not be tolerated.

A W A R D

Claim sustained in accordance with the Findings.

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 30th day of March, 1983.