

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
 { Southern Railway Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement Laborer W. E. Davenport, I. D. No. 411-78-7359, was unjustly dismissed from the service of the Southern Railway Company on February 25, 1981, after a formal investigation was held on February 23, 1981.
2. That accordingly Laborer W. E. Davenport be restored to service at Southern Chattanooga Diesel Shop, Chattanooga, Tennessee, be compensated for all lost time, vacation, health and welfare, hospital, life insurance and dental insurance be paid effective February 25, 1981, and the payment of 6% interest be added thereto.

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 were given due notice of hearing thereon.

Claimant was dismissed following a preliminary investigation on the charges of excessive absenteeism. This penalty was held in abeyance pursuant to the request of the Local Chairman for a formal investigation. Following this hearing, Claimant was notified by the Carrier that he was found guilty of the charges of excessive absenteeism and dismissed from the service of the Carrier.

The Claimant raises two issues to be considered by this Board. First, that he was not guilty of excessive absenteeism, and second, that the dismissal was not proper.

With respect to the first issue (excessive absenteeism), there can be no question that the Agreement (Rules 30 and 55(b)) outline the responsibilities for an employe to protect his/her assignment, except of course, in the event of sickness and other good cause. The Claimant's time cards for the most recent 20 days of work prior to the investigation showed that the Claimant had missed 9 out of the 20 working days. In examining the Claimant's work history for his entire employment period with the Carrier, it is evident that the Claimant had

missed quite a significant amount of work. However, we will not examine any of the prior absences with respect to the issue of "excessive absenteeism" for the basis of the original charge. To do so would be unfair to the Claimant as he was not notified that the period to be considered in the investigation was his entire work history with the Carrier. Only the period cited in the original charges can be considered by this Board for the purpose of considering his claim.

This Board has consistently held that failure to protect one's work assignment is a serious offense.

In Second Division Award No. 7348, we stated:

"When an employee is so consistently and habitually absent over a long period of time that his employment becomes a serious liability rather than an asset, the carrier is entitled to terminate his services."

In Second Division Award No. 9172, we held:

"... no carrier can be expected to operate a safe and efficient operation unless employees take seriously their duty and obligation to report to work and protect their assignment."

Absent evidence of abuse of discretion, arbitrary or capricious behavior which would impede the outcome of a fair and impartial hearing, this Board will not substitute its judgment for that of the hearing officer. This is a well-established holding which applies to the instant case. We find nothing in the record to substantiate our interference with the findings as adduced by the hearing officer with respect to the charges of excessive absenteeism. In fact, our examination would yield a similar determination.

We therefore face the second issue as presented by the Claimant as to whether the penalty of dismissal was warranted for the Claimant's behavior. We find that dismissal was appropriate in this case. In addition to the Claimant's prior work history, his disciplinary record is replete with reprimands and even suspensions for the same charge as faced in the instant case. The Carrier cannot be expected to permit this type of behavior to continue. At some point, the Carrier is entitled to sever the employment relationship with the employee who has over time demonstrated that he is not committed to the service of the Carrier. We find that the Carrier was fully justified to impose the penalty of dismissal in this case. As we stated in Second Division Award No. 7852:

"An employee has an obligation to report to work regularly and on time ... this is a fundamental aspect of the employment relationship."

Carrier cannot be criticized for attempting to take firm measures to deter excessive absenteeism and tardiness."

We cannot uphold the claim of the Organization.

Form 1
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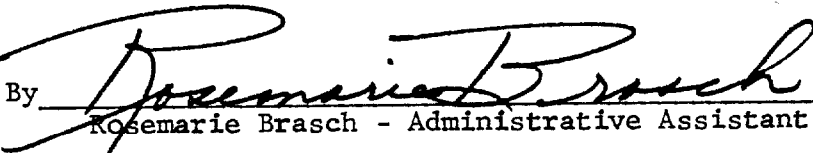
Award No. 9473
Docket No. 9513
2-SOU-FO-'83

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 4th day of May, 1983.