

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, Firemen and Oiler J. V. Vuscovich was unjustly dismissed from service of the Carrier following formal investigation held on date of January 9, 1981.
2. That accordingly the Carrier be ordered to make the aforementioned J. V. Vuscovich whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, customs or law, and compensated for all lost wages plus 6% annual interest on all such lost wages.

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 employees 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 had been employed as a laborer for a little over two years at the time of his dismissal. The revised letter of charge cited continuing disregard and violation of Carrier's operating rules, the latest violations being on December 18, 1980, "... at which time you were uncivil and displayed ungentlemanly actions to employes; also carelessness, negligence and indifference in performance of your duties; being dishonest and insubordinate to your supervisor; for continuing tardiness and unauthorized absenteeism and working in an unsafe manner by refusing to wear protective equipment." The revised Notice, while clearer than the initial Notice, did not differ from the original in terms of the charges made. It merely summarized the rules allegedly violated on a continuing basis, and indicated that each had allegedly been violated on December 18th.

Organization objected to the revision and reissuance of the Notice, contending that the reissuance made it untimely with respect to the date of the alleged incidents. In view of the fact that claimant was informed upon cancellation of the initial Notice that a revised Notice would be issued and since the revised

Notice did not add new charges, but merely summarized the initial charges, we find that claimant was not in any way prejudiced by this action and the objection is without merit.

Organization further objected to vagueness and a lack of specificity in the charges. Organization points out that neither Notice referenced the charged violations to specific acts or situations occurring on December 18th and that the Carrier thus did not meet its obligation to apprise claimant of the "specific" charges against him. We find that there is some merit to this allegation and it will be discussed below.

Organization also objected to the multiplicity of violations charged, contending that it was merely a "catch-all" or a "fishing expedition". The Board does not agree with this characterization, however, it is to some extent intertwined with the specificity question and Carrier's failure to provide factual references for those charges which are not self-explanatory.

The charges make it clear that the incidents on December 18th were not regarded as isolated events by the Carrier, but as part of a total unsatisfactory pattern. The evidence showed that claimant had been spoken to on numerous occasions by a number of supervisors about wearing his hard hat and safety glasses. He had been admonished about absenteeism and was not only late on the 18th, but this was the third lateness in a 7 day period. The testimony showed that he had been spoken to about his indifferent performance of his duties and that on the day in question, after inadequately washing the truck, he refused an order to wash it again. The charge of uncivil conduct was not proven by direct evidence, although claimant made a threatening statement about another employe to his foreman. As to dishonesty, while claimant admitted that he represented himself on the telephone as a Union officer, the charge appears to be equally involved with a request to be off for a year in lieu of an investigation.

It seems to us that the matters of lateness/absence and of wearing of safety equipment need no special explanation. The first is a matter of record and the second occurred with such frequency that claimant could not have been unaware of his supervisors' dissatisfaction with his failure to wear his hard hat and safety glasses. The other charges, although also allegedly part of a continuing pattern, refer to specific incidents which should have been noted in the Notice. For one thing, to do so would make it clear that the Carrier was not involved in "a fishing expedition". Secondly claimant is entitled to know what actions on his part were allegedly in violation of the rules so that he may adequately explain or defend those particular actions.

Even though claimant's defense was probably not materially affected by the deficiency of the Notice since there were no witnesses besides himself and his foreman to his carelessness in washing the truck and his subsequent refusal of the order to wash it again, nevertheless Carrier had an obligation to apprise him of the specifics of the charge. The dishonesty charge was never clarified as to whether it referred to the telephone conversation or the later discussion of discipline. The danger of non-specific charges of rule violation is precisely that additional events may be slipped in as the case progresses. We cannot be sure one way or the other as to what was intended here under the original charge. Finally the charge of uncivil conduct towards other employes should also have

been more specific and should have been substantiated by someone who either heard or overheard claimant's actual words.

In view of the lack of factual specificity in the Notice with reference to those charges which were not a matter of record or obvious due to frequency, and the less than conclusive nature of the evidence with regard to his conduct towards other employees and the dishonesty charge, the Board is of the opinion that claimant should be reinstated. In view of the evidence against claimant, however, and his short and unsatisfactory work record we are not inclined to order any back pay, and would further warn claimant that if his attitude upon reinstatement continues in the prior unsatisfactory pattern his reinstatement may be short-lived.

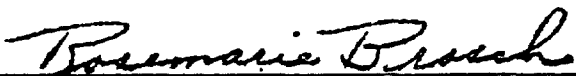
A W A R D

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 8th day of June, 1983.