Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9521
SECOND DIVISION Docket No. 9538
2-CMStP&P-FO-'83

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That in violation of the current Agreement, Laborer F. L. Baldwin Laborer, Milwaukee, Wisconsin, was unfairly dismissed from service of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company effective February 20, 1981.

2. That accordingly, the Carrier be ordered to make Mr. Baldwin whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from 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 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.

The Claimant, Mr. F. L. Baldwin, was employed by the Carrier as a Laborer at its Milwaukee Diesel House. By letter dated January 26, 1981, Mr. Baldwin was notified to appear for a formal hearing concerning charges of his alleged failure to protect his assignment and his failure to notify his foreman as early as possible that he would be detained from work on January 22, 23, 24 and 25, 1981. The formal hearing was held on February 2, 1981. Mr. Baldwin was notified by a Notice of Discipline dated February 20, 1981 that he was dismissed from the service of the Carrier. A claim was filed on behalf of Mr. Baldwin, which was properly handled on the property and is now properly before this Board.

Substantial evidence of record, including Mr. Baldwin's own admissions, supports the Carrier's determination that Mr. Baldwin had failed to protect his assignment on January 22, 23, 24 and 25, 1981. Mr. Baldwin had been previously counseled and later disciplined by the Carrier concerning his absenteeism. Indeed, just seven days prior to his failure to protect his assignment on January 22,

1981, Mr. Baldwin had returned to work on January 15, 1981 after serving a ten-day suspension in connection with absenteeism. We find that the discipline of dismissal in this particular case is neither arbitrary, capricious, nor excessive. We have considered Mr. Baldwin's statement made at the formal hearing that one of the reasons for not protecting his assignment on January 22, 23, 24 and 25 and not notifying his foreman on any of these dates was that he had been drinking. Based on the entirety of this particular record we simply cannot find that the discipline imposed was excessive; and we have no basis to substitute our judgement for that of Carrier.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June, 1983.