

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 Employees:

1. That in violation of the current Agreement, Laborer D. J. Sullivan, Laborer, St. Paul, Minnesota, was unfairly dismissed from service of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, effective March 3, 1981.
2. That accordingly, the Carrier be ordered to make Mr. D. J. Sullivan 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 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.

The Claimant is Mr. D. J. Sullivan, a Laborer represented by the Firemen and Oilers' Organization. By letter dated February 3, 1981, Mr. Sullivan was notified by the Carrier that a hearing would be held on February 10, 1981, in connection with the following charges:

- "1. Allegedly vacating your job assignment at 4:45 p.m. on January 26, 1981, without receiving proper permission to do so.
2. Allegedly failing to notify foreman that you would be detained from work on January 27, 1981, and January 28, 1981, as called for in Rule 30 in the SCHEDULE OF RULES GOVERNING HOURS OF SERVICE AND WORKING CONDITIONS OF STATIONARY ENGINEERS, FIREMEN AND OILERS, ROUNDHOUSE AND SHOP LABORERS.

3. Allegedly reporting to work ten minutes late on February 2, 1981.
4. Allegedly failing to receive work orders from foreman at start of shift on February 2, 1981.
5. Allegedly vacating your job assignment at approximately 4:45 p.m. on February 2, 1981, without proper permission to do so."

As set forth on page 2 of Mr. A. K. Drew's letter of May 11, 1981, Mr. Sullivan had stated to the Hearing Officer that it would be okay to hold the hearing as scheduled on February 10, 1981; and the hearing was so held, with Mr. Jensen as his representative. By notice dated March 3, 1981, Mr. Sullivan was notified by the Division Manager that he was terminated as of that date for the following reasons:

"Mr. D. J. Sullivan
461 Woodruff
Roseville, Minnesota 55113

Dear Sir:

After giving due consideration of the facts developed at formal hearing held at St. Paul, Minnesota, on February 10, 1981, in connection of charges of which you were advised in notice and dated February 3, 1981, and as a result of your vacating your job assignment at 4:45 p.m. on January 26, 1981, failing to notify foreman that you would be detained from work on January 27, 1981, and January 28, 1981, reporting to work ten minutes late on February 2, 1981, failing to receive work orders from foreman at start of shift on February 2, 1981, vacating your job assignment at approximately 4:45 p.m. on February 2, 1981, without proper permission to do so...Your service with the Company is terminated as of March 3, 1981."

We have reviewed the record of the proceedings and find no prejudicial errors in the manner in which the hearing was conducted. Mr. Sullivan agreed to hold the hearing as scheduled on February 10, 1981 and Mr. Jensen properly acted as his representative. The Organization contends that Mr. Sullivan was not allowed to ask questions of witnesses at the hearing. The Organization had a copy of the transcript and does not indicate to this Board at what point in the proceedings Mr. Sullivan was deprived of his right to cross-examine witnesses. We have reviewed the record and cannot locate any point in the transcript where Mr. Sullivan was deprived of his right to question witnesses; and the record clearly shows that Mr. Jensen did in fact question witnesses or was given an opportunity of record to question witnesses. We are compelled to reject the Organization's contention that Mr. Sullivan was deprived of his right to cross-examine witnesses.

We find that substantial evidence of record supports the Carrier's finding that Mr. Sullivan was responsible for vacating his job assignment without receiving proper permission on January 26 and February 2, 1981; failing to protect his

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assignment on January 27 and 28, 1981; reporting ten minutes late on February 2, 1981; and failing to receive work orders from his foreman at the start of the shift on February 2, 1981.

In reviewing the appropriateness of the discipline assessed in this case, we have reviewed Mr. Sullivan's past record. Mr. Sullivan's seniority date was November 14, 1978. Since that date he received three letters of warning for excessive absenteeism and tardiness, and was previously removed from service as a result of the findings of a hearing held on March 26, 1980, for insubordination. We find that the discipline of dismissal was neither arbitrary, capricious nor excessive.

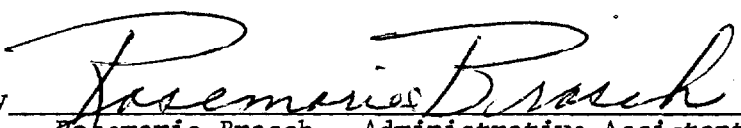
A W A R D

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 15th day of June, 1983.