

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Milwaukee-Kansas City Southern Joint Agency

Dispute: Claim of Employees:

1. Under the current controlling agreement, Firemen & Oiler J. C. Blasco in the locomotive department for the Milwaukee-Kansas City Southern Joint Agency, Kansas City, Missouri was unjustly dismissed from service of Carrier on September 3, 1981 in letter addressed to J. C. Blasco dated September 3, 1981.
2. That accordingly, Firemen & Oiler (Laborer) J. C. Blasco be made whole, restored to Carriers service with all seniority rights, vacation rights, Holidays and all other benefits that are a condition of employment unimpaired and compensated for all wages lost from date dismissed, September 3, 1981 plus 6% interest on all such wages, also reimbursement for all losses sustained account loss of coverage under health and welfare and Life Insurance agreements during time held out of service.

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.

On September 3, 1981, an investigation was held to determine the facts relative to the charge that the Claimant failed to protect his assignment on August 22 and 26, 1981. Following the investigation, the Claimant was dismissed from service on September 3, 1981.

The foundation of the Organization's appeal, on the property, is that the Claimant, on both dates for which he is charged with absence, telephoned the Carrier to convey a message that he had overslept. On the first occasion, the Organization contends that the Foreman told the Claimant that his position had been filled for that date. The Foreman then asked whether the Claimant would be reporting to work the next day. The Claimant replied affirmatively. At that point, the Foreman allegedly thanked the Claimant for calling. In the Claimant's version, the Foreman's remarks left him with the impression that his assignment had been protected.

On the second occasion, August 26, 1981, the Claimant testified that when he telephoned the Foreman, he was told not to come to work. He, therefore, contends that because he called and was told not to report for work, he was carrying out instructions and accordingly, his assignment should have been protected.

The Carrier contends that the governing agreement requires that its employees obtain permission to absent themselves from work. In the Carrier's opinion, the circumstances shown to exist during the investigation of the incidents under dispute did not meet the requirements of the agreement.

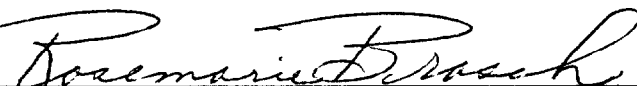
Certainly, the Claimant's contentions are not without merit. Nevertheless, during the investigation, his own statements acknowledged that he did not receive permission to be absent from work. Consequently, it is quite clear that guilt of the charge has been established. Although we are reluctant to modify the Carrier's disciplinary penalty, in view of the facts and circumstances brought forth in the record of this proceeding, we consider permanent dismissal to be excessive discipline. The Claimant is to be restored to the service, with seniority and other rights unimpaired, but without compensation for time lost while out of the service. The Claimant should understand that the purpose of this Award is to give him a final opportunity to become a useful and reliable employee. The Board expects him to comport faithfully with his employment obligations in the future.

A W A R D

The Claim is hereby sustained to the extent indicated in 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 6th day of July, 1983.