

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

Parties to Dispute: (Int'l. Brotherhood of Firemen and Oilers
(System Council No. 44, AFL-CIO
(
(Southern Railway Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement, Laborer, M. B. Macias, II, S.S. No. 265-15-8895, was unjustly dismissed from service of the Southern Railway Company, on August 1, 1980, after a preliminary investigation was held on June 14, 1980, in the office of Mr. P. H. Freeman, General Foreman.
2. That accordingly Laborer M. B. Macias, II, be restored to service with his regular assignment at Inman Yards, compensated for all lost time, vacation, health and welfare, hospital, life and dental insurance premiums be paid effective June 22, 1980, (date of suspension) and the payment of 6% interest rate 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 employes 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 joined the Carrier's employ in September, 1977, and was assigned as a Laborer in its Diesel Locomotive Fueling facility in Atlanta, Georgia, During the first five months of 1980, he reported absent from work on 21 occasions on account of jury duty. Each time, he marked off his time card and was compensated for the day at his regular rate. At the Carrier's request, the Claimant submitted the following Court verification statement:

"This is to certify that Miguel B. Macias has served 19 days, 1-23-80 through 5-23-80, as a Special Grand Juror in the Superior Court Criminal Division, and is entitled to a total of \$285.00 which is fifteen dollars per day expense allowance for each day of appearance."

On May 27, 1980, General Foreman Freeman compared the Claimant's time cards against the above statement. He discovered that the Claimant had accepted pay from the Carrier for 21 days of jury service, when according to the court he had served only 19 days. The Claimant was subsequently charged with falsification of his time card, excessive absenteeism, and excessive tardiness.

After a preliminary investigation of the charges was conducted on June 24, 1980, the Claimant was suspended for 30 days. Later the same day the Claimant asked for a formal investigation. The Carrier granted his request and decided to hold the suspension in abeyance pending outcome of the formal investigation. Again on that same day (June 24, 1980) the Claimant advised the Carrier he had decided to withdraw his request for a formal investigation. The Carrier then told him that the 30-day suspension would begin immediately.

On June 27, 1980, after he had begun serving the suspension, the Claimant advised the Carrier by letter that he had again changed his mind and wanted a formal investigation. The Carrier granted his request and held the remainder of the suspension in abeyance.

After several postponements at the request of both parties, a formal investigation was ultimately conducted on July 25, 1980. Master Mechanic F. L. Brown notified the Claimant in an August 1, 1980, letter that the charges against him had been confirmed. The letter also stated:

"With regards to the charge of excessive absenteeism and tardyness.(sic) The transcript of the Formal Investigation show (sic) that the middle of January through the middle of July you were absent more that you worked. Out of 120 probable work days you only worked 53 days. In addition, you were tardy 18 of the 53 days which you worked. General Foreman Enrick testified that he had talked to you on many occasions about your work record but saw no improvement.

The formal investigation showed clearly that you are guilty of falsifying your time card and excessive absenteeism and tardyness (sic) as charged. Therefore, you are dismissed from service with the Southern Rail Company, effective this date."

The Organization feels that the Claimant's dismissal was unjust, especially since he had not received any previous suspension for absenteeism or tardiness. It also asserts that the Carrier's method of payment for jury service entrapped the Claimant. That is, over the five months of his jury service the Carrier should periodically have deducted his court-paid compensation from his regular earnings for each day of jury service. Such a procedure conforms to the December 6, 1978 Agreement, and would have required to Claimant to submit regular court verification of jury service.

The Carrier maintains there is no question the Claimant falsified his time cards. He was given every opportunity to resolve the discrepancy between the 21 days he claimed for jury service and the 19 days he actually served. He did not do so.

The Carrier also argues that its method of payment for jury service has no bearing on this case.

With respect to the Claimant's absenteeism and tardiness, the Carrier notes that during the 30 days prior to the preliminary investigation he did not work and did not so advise the Carrier on 9 days. During that same period he was also absent 6 more days when he reported off for various reasons, and twice failed to work his entire shift.

Finally, the Carrier maintains that it properly converted the Claimant's 30-day suspension to discharge. It cites rule 34(a) & (d) of a May 8, 1975, Agreement in support of its position:

(a)...The investigation, which shall be held within five days from the date request therefor is made, shall be conducted for the purpose of determining the propriety of the balance of the discipline assessed and decision with respect thereto shall be rendered as provided in Paragraph (d) of Rule 34.

(d)...The Carrier officer conducting the formal investigation shall receive all evidence, including testimony or statements of witnesses concerning the act or acts upon which the discipline was based, and he shall render a decision affirming, modifying (by increasing or decreasing) or revoking the prior disciplinary action.

The Board has concluded from study of the formal investigation that the Carrier's decision to discharge the Claimant was reasonable. First, we are persuaded from the record before us that he falsified his time cards with the intent to defraud the Carrier. He claimed 21 days' pay for jury service, received said pay, and therefore has the obligation to verify such service. He did not do so. We find this offense alone of sufficient magnitude to justify his termination.

The Claimant's chronic absenteeism, and to some extent his tardiness as well, add to the severity of his offense. We take note that he received no prior suspensions for his absence/tardiness record. Accordingly, if his discharge had been based solely on that record we would question whether he had received the benefit of progressive discipline. But again, falsification of his time cards is serious enough on its own to justify termination.

Moreover, the Board is not persuaded that the Carrier's method of payment for jury service entrapped the Claimant. The Carrier did not encourage him to falsify the time cards, nor do we believe verification of an entire course of jury service after its completion would somehow induce an honest employee to falsify Carrier records.

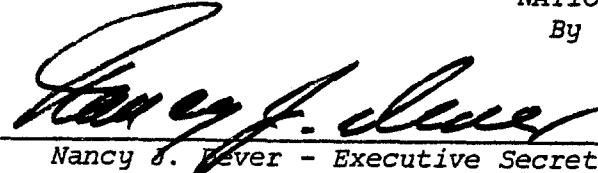
Finally, we find nothing improper in the Carrier's decision to convert the 30-day suspension to a discharge. Its reliance on the terms of Rule 34 (quoted in part herein) for authority to do so is proper.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984