

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Indiana Harbor Belt Railroad Co.

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer James D. Williams was unjustly dismissed from service of the Carrier following trial held on August 20, 1981.

2. That, accordingly, the Carrier be ordered to make the aforementioned James D. Williams whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten [10%] percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been 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 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.

Claimant entered Carrier's service on January 7, 1980. At the time of the occurrence giving rise to the dispute herein, he was employed as a laborer at Carrier's Gibson Roundhouse, Gibson, Indiana.

The record shows that claimant marked off work on May 28, 1981. On June 12, 1981, Claimant was notified in writing by the Carrier's Assistant Superintendent that in order to retain his name on the seniority roster, he must comply with Company policy and request a leave of absence for medical reasons. He was also sent a medical information form that he was requested to have his personal physician fill out and return to the Carrier. Claimant did not respond to the letter of June 12, 1981. On July 3, 1981, he was sent another letter containing basically the same information and request. Claimant did not respond to that letter. On July 16, 1981, he was sent a third letter, certified mail, which letter was returned to the Carrier unclaimed.

On August 12, 1981, claimant having attempted to return to work, and having requested a formal trial, was notified to attend a trial on August 20, 1981, on the charge:

"Violation of Rule 12(a) of the Firemen and Oilers Agreement between the Indiana Harbor Belt Railroad and International Brotherhood of Firemen and Oilers.

Failure to comply with employee absence policy."

The trial was conducted as scheduled. Claimant was present and represented. A copy of the transcript has been made a part of the record. Upon review, we are of the opinion that the trial was conducted in a fair and impartial manner.

The Employee Absence Policy, referred to by the Carrier in its notice of trial, reads in part:

"D. Employees desiring to be absent from work for thirty (30) days or more must make written request to their General Foreman or Master Mechanic. Employee must provide an explanation for desiring to be away from work and provide a statement from their personal physician if the absence is due to illness or other medical reasons."

Rule 12(a) of the Agreement referred to, reads:

"When the requirements of service will permit, an employee will be granted leave of absence under reasonable circumstances, but he must make written application in duplicate to the Company official in charge, who will forward one copy to the General Chairman."

In the trial, in response to question by the conducting officer:

"Mr. Williams, concerning the charge of Violation of Rule 12(a) of the Fireman and Oilers Agreement between the Indiana Harbor Belt Railroad and International Brotherhood of Firemen and Oilers; and Failure to comply with the employee absence policy, how do you plead to the charge?"

claimant responded:

"Guilty."

In view of claimant's plea of guilty, the trial was over and it was not necessary for the Carrier to present further evidence. See First Division Award 16712, Third Division Awards 20089, and Second Division Awards Nos. 2590 and 2787.

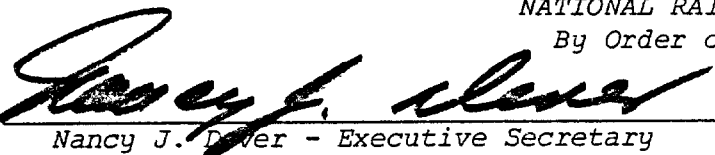
Notwithstanding claimant's admitted guilt, we conclude that permanent removal from the service, under the circumstances involved herein, was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

A W A R D

Claim sustained to the extent indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984