

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer D. Happersett, Minneapolis, Minnesota, was unfairly dismissed from service of the SOO Line Railroad Company, effective June 28, 1982.
2. That accordingly, the Carrier be ordered to make Mr. Happersett 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 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, D. Happersett, was employed as a laborer and from time to time as a temporary carman by the Soo Line Railroad Company from February 4, 1978, until his discharge on June 28, 1982. Claimant's tour of duty was from 7:30 a.m. until 4 p.m.

It is undisputed that on Saturday, June 12, 1982, Claimant did not arrive to work until 8:30 a.m. and left without authority at 3 p.m. A supervisor observed him leaving a bar 40 minutes later. On Sunday, June 13, 1982, Claimant called in sick at 9:30 a.m.

As a result of the above facts, Claimant was charged with violating Rule 14 of the current Shop Craft Agreement on June 12 and 13, 1982. Rule 14 states:

- "1. In case an employee is unavoidably kept from work on account of sickness or emergency, he must notify his foreman as early as possible.
2. Permission to be absent from work for other causes must be obtained from foreman."

At the investigation, which was held on June 21, 1982, Claimant was found guilty of violating Rule 14 and was dismissed from service as of June 28, 1982.

The Organization contends that:

1. The Carrier's action dismissing the Claimant was an unjust action and an abuse of managerial discretion; and
2. The evidence does not support the Carrier's finding that Claimant violated Rule 14.

While the facts are not in dispute, the Organization contends that Claimant complied with Rule 14 when he was late to work on June 12, 1982, because he reported to work as quickly as possible. Claimant lives across the street from the shop but has no telephone; thus, the Organization argues that rather than walking to a telephone, Claimant simply reported to work as soon as possible.

Concerning Claimant's alleged violation of Rule 14 on Sunday, June 13, 1982, when he did not call in sick until 9:30 a.m., the Organization contends that Claimant complied with Rule 14 by calling in as soon as possible. The Organization argues that 9:30 a.m. was as soon as he could call in because Claimant testified that he did not wake up until that time.

The Carrier contends that:

1. There has been no abridgement of Claimant's rights;
2. The evidence supports the finding of guilt; and
3. The discipline assessed was not unreasonable.

The Carrier submits that the Claimant had been previously disciplined for absenteeism and argues that Claimant's continued absenteeism was a willful and flagrant disregard for authority, rules, and regulations applicable to others.

The Carrier submits that it has made vigorous attempts to assist Claimant in that the Carrier was supportive of the Claimant on three other occasions when Claimant was treated for chemical dependency. Additionally, Carrier argues that its officers have attempted, in vain, to assist Claimant in improving his work performance.

It is the finding of this Board that the facts established in the investigation support Carrier's finding of guilt and that the dismissal of Claimant was not unreasonable.

Claimant's argument that he did not violate Rule 14 is wholly without merit. Claimant's actions of reporting to work late and leaving early without notification and calling in sick late are clear violations of Rule 14.

Claimant's prior work record establishes a pattern of absenteeism for which the Claimant has been progressively disciplined. On July 3, 1979, Claimant was issued a letter of warning for absenteeism. On May 5, 1980, Claimant was issued a five-day suspension for absenteeism. On October 18, 1980, there was a corrective conference regarding absenteeism with the Claimant. On July 20, 1981, Claimant was suspended for ten days for absenteeism.

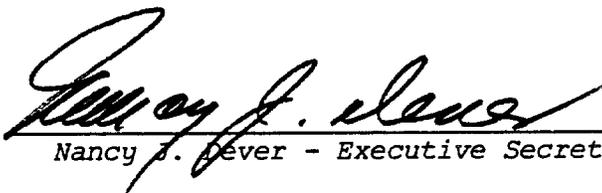
The record shows that the Carrier has made every attempt to help the Claimant. The Claimant has been progressively disciplined for similar offenses. It is well settled that this Board may not substitute its judgment for that of the Carrier in a discipline case unless the Carrier's action is found to be arbitrary or capricious. The Carrier's action in dismissing the Claimant is not arbitrary, capricious, or unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1984.