

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 Electrical Workers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) has unjustly dismissed Electrician Earl Robinson from service effective May 3, 1982.
2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Earl Robinson to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge 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, Earl Robinson, was dismissed by the National Railroad Passenger Corporation (Amtrak) on May 3, 1982. Prior to that date he had been an Electrician at the Sunnyside Yards, New York.

On April 1, 1982 Claimant was charged with excessive absenteeism, lateness, and early departures. The Carrier issued a Notice Of Investigation specifying the Claimant was late on March 2, March 6, March 12, March 17, March 23, March 24 and March 30, 1982; Claimant left early on March 5, March 26 and March 31, 1982; and Claimant was absent on March 27, 1982. After an investigation held in absentia on April 28, 1982 by Assistant Superintendent C. T. Prehm, Claimant was dismissed from the service.

The Organization contends that the Carrier violated the controlling agreement by making charges against the Claimant that involved offenses of which Carrier had actual knowledge more than 30 days from its date of notification of April 1, 1982. The Organization cites Rule 23 which states:

"(a) Employees who have been in service more than 60 calendar days shall not be disciplined or dismissed without a fair and impartial investigation unless such employees shall accept such dismissal or other discipline in writing and waive formal investigation. Such waiver must be made in the presence of a duly accredited representative of the organization. The employees may be held out of service pending such investigation only if their retention in service could be detrimental to themselves, another person, or the company.

(b) Employees shall be given written notice in advance of the investigations, such notice to set forth the specific charge or charges against them. No charge shall be made that involved any offense of which the company has had actual knowledge 30 calendar days or more, except where a civil action or criminal proceeding results from the offense, in which event the charge may be made within 30 days of the final judgment. The investigation shall be held at the city of employment within 10 calendar days of the date when notified of the offenses or held from service (subject to one postponement not to exceed 10 calendar days). At such investigation, the employees may be assisted by their duly accredited representative. A decision will be rendered by the investigation officer within 15 calendar days after completion of the investigation.

The Organization contends that at the hearing at which the Claimant was not present the Carrier listed the Claimant's past discipline record. At the hearing, it was stated:

"Since Mr. Robinson or his Union Representative are not present at this investigation I will read into the record Mr. Robinson's past discipline record.

He had a formal investigation conducted on February 25, 1982, charged with excessive absenteeism and lateness on the following dates: That he was absent January 15, 23, 1982 and February 6, 1982. That he was late January 14, 16, 19, 26, 29, 30, 1982 and February 2, 3, 4, 5, 9, 16, 18, 19, 1982. Plus, he had an early departure on January 16, 1982. Discipline-he receive 60 calendar days suspension, which is at this time under appeal. He also had a formal investigation held on October 27, 1981, charged with violation of Rules 'I' and 'K' in part, which reads as follows:

Rule "I" - Employees will not be retained in service who are dishonest. And Rule "K" - Employees must attend to their duties during the hours prescribed and comply with the instructions from their supervisors. In that on Thursday, October 8, 1981, he failed to replace an M. A. brush on Jersey Arrow 1304 as per Foreman, W. T. Perry's instructions and that he falsely informed Foreman Perry, in the presence of General Foreman, Joe Tursi that he had in fact changed the brushes. He received a discipline of 30 calendar days suspension for that charge. He had a formal investigation which he waived on June 3, 1981 charged with excessive lateness on the following dates: May 5, 6, 8, 12, 26, 27 and 29, 1981. For which he received a discipline of 3 working days suspension which was held in abeyance from previous charge (SIC) dated 5-7-81, 5 days suspension for present charge a total of 8 calendar days suspension. He had an additional investigation on May 7, 1981 charged with excessive absenteeism and lateness on the following dates causing inconvenience to the company: Absent April 8, 1981 and April 29, 1981. Lateness April 3, 6, 7, 9, 13, 14, 15, 16, 20, 21, 22 and 28th of 1981 for which he received a discipline of 3 working days suspension, held in abeyance for 6 months which later served to a later investigation.

That constitutes Mr. Robinson's discipline record in his personnel folder."

Hence, concludes the Organization, the Claimant was deprived of a fair and impartial investigation by the Carrier's violation of Rule 23.

The Organization also contends that since Claimant was not present at the investigation and did not have an opportunity to confront the witnesses against him that he was denied a fair trial. The Organization argues that the Carrier took advantage of the absence of the claimant and thereby violated Rule 23 by putting in evidence that should be considered stale.

The Carrier argues that the Claimant was accorded a fair and impartial investigation in that the charges were written specifically setting forth the dates and times of the incidents which caused the charges to be written. The Carrier contends that although Claimant Robinson was presented with a copy of the notice of investigation he chose not to attend. Moreover, the Claimant and the Organization did not object to the hearing held in absentia nor did they allege that the hearing was not fair.

Moreover, Carrier argues that Carrier met its burden of establishing that Claimant Robinson was absent, tardy and left early on the dates for which he was charged. The timecards of the Claimant corroborates the oral testimony.

Finally, Carrier argues that discipline was warranted in that the Claimant had been assessed four instances of discipline previously, three of which were for similar offenses.

After reviewing all of the evidence, this Board finds that there is sufficient evidence in the record to support the discipline imposed by the Carrier. Moreover, the hearing was fair and the Claimant did not suffer any violation of his rights.

This Board finds that the Claimant was given ample notice of the hearing and chose not to attend. Moreover, Claimant was only charged with incidents of absence, tardiness and leaving early for a period over the previous 30 days. Consequently, there was no violation of Rule 38.

The references in the record that were made to previous dates of absence, leaving early and tardiness on the part of the Claimant were only utilized to support the discipline imposed, not to establish the Claimant's guilt of the offense charged. The guilt of the offense charged was clearly established by the testimony and the other corroborating evidence including the timecard.

This Board has stated on several occasions in the past that the employer has the right to require that its employes come to work on time and work a full day. If an employe cannot abide by reasonable attendance rules, the employer can impose discipline up to and including discharge.

We find no reason to set aside the discipline in this case. Claimant had a poor attendance record for a long period of time, and his last month at work was clearly the straw that broke the camel's back. This Board will only set aside discipline if it finds that the action of the Carrier was unreasonable, arbitrary or capricious. This Board finds no such abuse of discretion on the part of the Carrier in this case.

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 22nd day of August 1984.