

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 10214
Docket No. 10336
2-MNCR-EW-'85

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(
(Metro-North Commuter Authority
(Consolidated Rail Corporation)

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation has unjustly dismissed Harmon, NY Electrician W. C. Terry from service, effective July 7, 1982.
2. That accordingly, the Metro-North Commuter Railroad be ordered to restore Electrician W. C. Terry 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 entered Carrier's service on December 19, 1977, and was employed at the Harmon Car Department in Harmon, New York. Notice to attend trial on the charge of excessive absenteeism dated June 4, 1982, was served by certified mail upon Claimant on June 10, 1982. The trial date of June 10, 1982 was rescheduled to June 25, 1982, and Claimant was mailed notice of the new trial date at the same address as the first notice. Trial was had on June 25, 1982, without Claimant present, and with no request by the Organization's representative for a postponement. Effective July 7, 1982, the Carrier dismissed Claimant from service in all capacities.

Claimant was charged with excessive absenteeism due to his absences on May 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 31, 1982, and June 1, 2 and 3, 1982. Carrier's General Foreman testified that Claimant's daily attendance record showed the absences as charged, and that Claimant never contacted the General Foreman about his work absences.

The Organization argues that by conducting Claimant's trial in his absence, he was deprived of a fair and impartial investigation in derogation of Rule 6-A-1(a). Carrier contends that Claimant was proved absent on the dates as charged at a fair and impartial trial.

We find upon the entire record that the charge was proven, and that the discipline of dismissal was warranted. Claimant was properly notified of the trial date, and his representative had no comments or criticisms of the manner in which the hearing was conducted. No postponement of the trial date was required. Even had the trial date been rescheduled, the evidence is manifest that Claimant was guilty of the charge. The daily attendance record revealed he only worked twenty-eight (28) days during the period January 1 through June 27, 1982.


Claimant's apparent lack of concern for his employment coupled with the hardship that such unexplained behavior imposes upon the Carrier and Claimant's fellow employees cannot be tolerated. The nexus between behavior such as Claimant's unexcused absences and eventual diminution of the effectiveness of Carrier's service is self-evident. Upon sufficient, credible evidence within the record, this Board is compelled to find that the discipline assessed is neither arbitrary, capricious, nor unjust.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1985.