

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed Machinist H. G. Morrow (Hereinafter referred to as Claimant) from service on April 12, 1982.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired with compensation for all wage loss.

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 H. G. Morrow requested a leave-of-absence on January 28th, to end on February 11, 1982, because of an on-the-job back injury. On February 8, 1982, the Claimant returned to Carrier and requested a continuation from February 12, 1982 through February 28, 1982 as a renewed medical leave of absence. In signing the forms, he agreed with the statement that "engaging in outside employment or business during the term of this leave is forbidden, unless special written authority is granted me to do so". He listed the requested leave for medical reasons and had no written authority to engage in any form of outside employment or business activity. Claimant returned to work on February 23rd and received notice dated February 24, 1982 to appear at a formal hearing, which was later held on March 25, 1982. He was charged with alleged violations of Rules 14 and 16, second paragraph. Those Rules read as follows:

Rule 14

"Employes must obey instructions from the proper authority in matters pertaining to their respective branches of service. They must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations."

Rule 16, Second Paragraph

"Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome, or vicious."

A complete review of the Transcript does not substantiate Organization's arguments that the Claimant failed to received a fair and impartial investigation. As a result of that investigation, the Carrier found the Claimant guilty of withholding information, being indifferent to duty and dishonest. Claimant was dismissed from service.

The Transcript of the investigation contains uncontroverted evidence that the Claimant requested a leave of absence on February 8, 1982 for a "medical leave (back injury)." On the eighth he was involved in some form of military training and aware at the time he requested the above leave that he was under orders for temporary active military duty for February 9th, 10th and 11th. Claimant did not list this information on this request, nor provide such information in any form whatsoever to the Carrier. While it is argued that military duty may neither be business nor outside employment, the facts of this case substantiate that the Claimant was aware of the military duty, attended whatever active military duty was required of him and did so, without informing the Carrier, who believed Claimant was at home with a back injury. An overall analysis by the Board of the investigation Transcript shows that the Carrier has met the test of substantial evidence documenting that the Claimant did withhold information in violation of Rule 14 and was indifferent to duty and dishonest in violation of Rule 16, paragraph two.

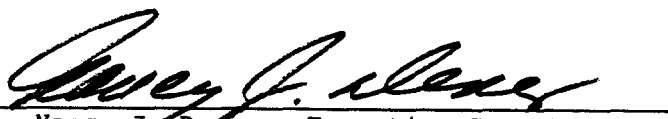
The record in this case establishes a justifiable assessment of discipline given the seriousness of the Claimant's offense. This Board finds that the discipline assessed was warranted. This is consistent with many past Awards that have held that dismissal for behavioral dishonesty of any form cannot be considered excessive (Second Division Awards 1756, 7846, 8159 and Third Division Awards 16168, 17155, 19486).

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 13th day of March 1985.