

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Company's action in dismissing Mr. Larry E. Ewing from service on June 26, 1982, was indeed harsh, out of proportion, excessive and constituted an abuse of discretion.
2. That accordingly, the Missouri Pacific Railroad Company restore Mr. Larry E. Ewing to service
 - (a) With his seniority rights unimpaired;
 - (b) Compensation for all time lost, plus 12 percent annual interest;
 - (c) Make whole all vacation rights;
 - (d) Paid premiums (or hospital dues) for hospital, surgical, and Medical benefits for all time held out of service;
 - (e) Pay premium for his group life insurance for all time 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 employees or employees involved in this dispute are respectively carrier and employees 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.

The Claimant was employed as a Laborer at the Diesel Shop at the Carrier's Mechanical Department facility located at Fort Worth, Texas. Prior to June, 1982 the Claimant's length of service with the Carrier totaled approximately three (3) years. Following an investigation that was held on June 23, 1982, the Claimant was dismissed from service for failing to complete his tour of duty and falsifying his time card on May 5, 1982.

The Claimant acknowledged that on May 5, 1982 he went home at least forty-five (45) minutes before the end of his shift and filled out his time card so as to claim pay for the full eight (8) hours of his shift. He left the Carrier's facility before the completion of his tour of duty because he was "cold, tired and soaking wet" from having worked during the evening in a rain storm. Having no dry clothes to change into, he left the Carrier's facility and went home. As for the offense of falsifying his time card, the Claimant indicated that he forgot "to take the time off" his time card "because under the conditions" he was "absent-minded and made a mistake". Suffice it to say that these explanations do not excuse the offenses committed by the Claimant. The offenses are serious and cannot be condoned.


In light of the harsh weather conditions under which the Claimant worked during the evening of May 5, 1982 and the extraordinary discomfort he was in, after roughly seven (7) hours, the Board is of the view that the penalty of dismissal is excessive. However, the Board wishes to underscore that if the Claimant does not change his course of conduct there will be no alternative but dismissal. In light of the Claimant's poor absenteeism record and his conduct on May 5, 1982, it is the Board's judgment that the Claimant is to be reinstated without back pay.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1985.