

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation (Conrail)

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly dismissed Electrician Douglas E. Hosie from service effective March 5, 1982.
2. That accordingly the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician Douglas E. Hosie 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.

The Claimant has been employed by the Carrier as an Electrician at its Locomotive Terminal facility located in Harrisburg, Pennsylvania. He has been in the service of the Carrier for approximately 3 1/2 years. Following a trial that was held on February 26, 1982 the Claimant was dismissed from service for his "unauthorized absence from December 28, 1981 up to and including January 14, 1982."

On October 26, 1981 while at work, the Claimant slipped on an oil slick and fell about 15 feet, injuring his right knee and back. After a short stay in the hospital, and several visits to Dr. Rychak, a physician retained by the Carrier, he was released to return to service as of December 28, 1981. The Claimant did not return to duty on that date nor did he inform the Carrier that he would be absent between December 28, 1981 to January 14, 1982. On February 5, 1982, the Carrier was first informed that the Claimant had been approved by Dr. Rychak to return to duty on December 28, 1981.

The record warrants the conclusion that Dr. Rychak informed the Claimant that he was approved for return to duty on December 28, 1981. There is nothing in the controlling Agreement that required Dr. Rychak to give the Claimant a return to work slip in order to return to duty. The point to be underscored is that he did not return to duty on December 28, 1981; nor did he inform the Carrier that he had been approved for return to duty on that date. The Claimant realized that he was required to report for duty on December 28, as evidenced by his statement, "I'm not denying the fact that I didn't return to work ***."

In denying an appeal from the decision of dismissal of the Claimant, Senior Director, Labor Relations, indicated in a letter dated June 24, 1982 to the General Chairman that the Claimant was dismissed for his unauthorized absence and that he also violated Rule 8-1-2 which provides that an employee "unable to report for work" must "notify his shop or work location as soon as possible". It may very well be that Senior Director Labor Relations Walsh's letter was the first time that the Organization was informed that the Claimant violated Rule 8-1-2. Contrary to the Organization's claim, the Carrier did not charge the Claimant with the failure to notify the Carrier of his absence, although the record warrants the conclusion that such a charge would have been sustained. The Claimant was tried for the offense of "unauthorized absence" and after trial, he was dismissed for having committed this offense.

Another matter which must be considered is the letter dated March 3, 1982 by the Claimant's physician, Dr. Lonergan in which he states that the Claimant "would very likely not have been able to return to work" on December 28, 1981. Dr. Lonergan's opinion was based on information provided by the Claimant. In evaluating Dr. Lonergan's opinion, it should be noted that he first treated the Claimant on January 21, 1982 when the Claimant was admitted to Holy Spirit Hospital "in severe pain with low back and right leg discomfort." By Dr. Lonergan's letter, the Claimant informed him that such pain and discomfort had been present since his on-duty accident in October, 1981. What the Claimant failed to disclose was that on the day he was admitted to the Hospital (January 21) he was involved in an automobile accident in which he drove his car into the Susquehanna River. When Dr. Lonergan was informed of this fact, subsequent to his letter of March 3, 1982, he withdrew as the Claimant's physician stating, "there are many facets of this case which I did not become aware until recently". Accordingly, no weight can be given to Dr. Lonergan's letter dated March 3, 1982.

Form 1
Page 3

Award No. 10492
Docket No. 10174
2-CR-EW-'85

The record warrants the conclusion that the Claimant's absence from work between December 28, 1981 through January 14, 1982 was "unauthorized". Thus, the Carrier's decision to dismiss the Claimant from service should not be disturbed.

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 7th day of August 1985.