

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Southern Railway System

Dispute: Claim of Employees:

1. Under the current and controlling agreement, Service Attendant Edward Braddy, SS #255-92-2856, was unjustly dismissed from service of the Southern Railway System on November 30, 1982, without having a preliminary investigation.
2. And, Service Attendant Braddy should be restored to his assignment at Inman Yard, with all his seniority rights unimpaired.

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 were given due notice of hearing thereon.

The Claimant, E. Braddy, employed as a Service Attendant in the Carrier's Inman Yards, Atlanta, Georgia, and in service since June 11, 1979, was dismissed November 30, 1982. On December 4, 1981, the Claimant fell and bruised his side while pulling a fuel hose. He did not seek medical attention at that time. On May 24, 1982 the Claimant stated that his back was hurting as a result of the December 4th incident. The Claimant received medical attention at the Carrier's Clinic from May 25 through June 18, 1982, at which time the Carrier's physician advised the Claimant that he could find nothing wrong and was referring him to an Orthopedic Specialist. The Orthopedic Specialist saw Mr. Braddy on June 21 and June 25 and again found nothing wrong. The Claimant again returned to the Carrier's Clinic, and on July 2, 1982 he was found to be physically unimpaired. The Claimant returned to the Clinic on July 22, July 26, August 5, 1982 and was ultimately examined by four different physicians, none of whom felt that the Claimant was experiencing any serious physical problems.

On August 11, 1982, the Claimant brought a note from his personal physician, Dr. James A. Bailey, showing that, as of August 10, 1982, the Claimant was totally disabled from gainful employment. In light of this new evidence the Carrier's Chief Surgeon requested that the Claimant be again examined by a Carrier physician. From August 18, 1982 through November 16, 1982 the Carrier, on numerous occasions by letter and by phone, tried to contact the Claimant without success. On November 30, 1982 the Claimant was dismissed, and on February 18, 1983 a grievance was filed.

The Employees argued the Claimant could not be dismissed in this case as no investigation was held. In addition there was no showing that the various certified letters that were sent to the Claimant were refused by the Claimant. The matter did not surface until January 18, 1983 when the Claimant tried to pick up his vacation pay from the previous year. There is no rule that requires employees to notify the Carrier of change of address. The burden of proof in this matter rests on the Carrier. The Carrier should not be allowed to base a discharge on suspicion. There is no proof.

The Carrier argued they did everything within their power to communicate with the Claimant in this matter and that, if the Claimant had acted properly, he would have been notified of the various situations that were occurring with respect to his employment. The Carrier has a right to demand that employees submit to physical exams under the circumstances of this case, and it was the Claimant's own fault that he did not apprise the Carrier of his whereabouts during his absence. In addition the Carrier argued that the claim was not timely filed in that the Claimant was dismissed on November 30, but the grievance was not filed until February 18, 1983.

Upon complete review of the evidence, the Board finds that the grievance in this matter was timely filed. While the Claimant certainly cannot argue from the standpoint that he was not aware of the dismissal since it was his own fault that he was unaware, the Organization did claim, and this was unrefuted, that the General Chairman did not receive any information regarding the dismissal of the Claimant and was not aware of it until late January, 1983. With respect to the merits of the case, the Board finds the Claimant's conduct in this matter to be totally unacceptable. The Claimant was well aware of the Carrier's interest in his alleged on duty injury. What is lost amidst all the arguments concerning the refusals to accept certified letters is the Claimant's failure to inform the Carrier of changes in his phone and/or address. If the Claimant did not receive due process in this case, it is solely his own fault. In the future, if this type of incident should occur again, the Carrier might consider proceeding with the formal investigation on an ex-party basis in order to better satisfy the intent of the rule.

With respect to the appropriateness of the penalty in this matter, the Board finds that it was not so arbitrary as to cause the Board to substitute its judgment for the Carrier's in this matter. Therefore, the claim will be denied.

Form 1
Page 3

Award No. 10699
Docket No. 10662
2-SOU-FO-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy S. Bever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.