

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Association of Machinists and
(and Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. Continuing claim in behalf of Machinist Apprentice B. E. Norwood commencing April 23, 1984 for eight (8) hours at the pro rata rate for each day lost as a result of the Carrier's unjust dismissal of Mr. Norwood, in violation of the controlling Agreement, as amended, and in particular, Rule 32. For all overtime for which he would have been available at the punitive rate and all holidays until he is reinstated to service.
2. Credit for vacation and qualification during the interim period, compensation for medical and dental expenses he incurs that would have been covered under the Agreement.
3. Compensation equal to wages and benefits lost as the result of the loss of seniority due to the Carrier's unfair dismissal of Apprentice Norwood which will continue to damage Mr. Norwood for his remaining career.
4. Reimburse the Railroad Retirement Board compensation paid as unemployment benefits to Mr. Norwood as a result of his dismissal as damages.
5. Four hours pay at the pro rata rate for being required to attend the investigation April 17, 1984.
6. The removal of all material pertaining to this incident from his personal record file.
7. Plus ten percent per annum interest until the claim is settled.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees 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 in this case is a Machinist Apprentice who was first employed as a Laborer on date of August 17, 1977. He became a Machinist Apprentice on December 11, 1979, and was upgraded to the position of Machinist on March 10, 1982. His place of employment is Carrier's Little Rock Terminal at Little Rock, Arkansas. On date of April 8, 1984, Carrier sent the following Notice to him:

"Report to the office of Master Mechanic, 400 Yard Ramp, North Little Rock, Arkansas, 8:00 AM, to develop the facts and place your responsibility, if any, in connection with your alleged failure to protect your assignment as Machinist on the 11:00 PM to 7:00 AM shift, 400 Yard Ramp, when you showed up an hour late on April 7, 1984, and showed up 25 minutes late on April 7, 1984, without notifying your supervisor. Your attendance and work record will be reviewed at this investigation..."

The Investigation was held as scheduled and on April 23, 1984, Carrier advised Claimant by letter that:


"You are hereby advised that your record has this date been assessed with dismissal in connection with failure to protect your assignment on April 6 and 7, 1984, 11:00 PM to 7:00 AM shift, violation of Item 5 of Conditions of Employment and General Rules A and B of the Uniform Code of Safety Rules. Your record now stands dismissed."

The Claimant freely admitted being either absent or late on the days in question. His past record was also introduced and said record is truly deplorable. While an Employee cannot be disciplined over his past record, this Board has nonetheless ruled countless times that an Employee's past record can be considered in determining the degree of discipline. Considering and giving careful thought to all of the facts brought out in this case we do not feel justified in substituting our judgment for that of the Carrier, and we will deny the case.

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 1st day of October 1986.