

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Brotherhood of Firemen and Oilers  
Parties to Dispute: (  
(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, as amended, Service Attendant C. J. Nix, I. D. No. 184742, was unjustly dismissed from the service of the Seaboard System Railroad on July 18, 1985, after a formal investigation was held in the office of Mr. R. R. Haley, Asst. Master Mechanic's office on Tuesday, June 4, 1985.

2. That accordingly, C. J. Nix, Service Attendant, be restored to his regular assignment at Boyles Shops, Birmingham, Alabama, compensated for all lost time and that he be properly restored to his rightful position. Vacation, health and welfare, hospital and life insurance and dental insurance be paid effective July 18, 1985, and the payment of 10% interest rate be added thereto.

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, a Service Attendant at the Carrier's Boyles Shops, Birmingham, Alabama, has a seniority date of December 16, 1976. By letter dated June 5, 1985, Claimant was charged with dishonesty and making false statements in that Claimant had someone report him off his assignment on May 24, 1985, due to his sister's passing away. Claimant was further charged with repeated and chronic absenteeism in that Claimant was absent from his assignment at least 18 days since January 1, 1985. After an Investigation held in absentia on June 17, 1985, and by letter dated July 18, 1985, Claimant was dismissed from service.

The record shows that Claimant last appeared for work on May 23, 1985. On May 24, 1985, a child identifying himself as Claimant's son called the Carrier's Roundhouse Office and told Assistant Departmental Foreman, J. W. Jones, that he was reporting his father off due to the death that morning of Claimant's sister. On May 25, 1985, Claimant called Jones inquiring about his pay check. Jones inquired about the death and Claimant stated that the deceased was his sister, Freda Collins, and that the funeral would be held south of Florence, Alabama. On May 29, 1985, Claimant picked up his check and spoke with Mechanical Department Clerk, V. M. Freeman, who also inquired about the death in order to determine eligibility for bereavement pay. Claimant again stated that his sister died on May 24 and further stated that the funeral was on May 26 in Florence, Alabama. Claimant then declined to accept bereavement pay.

An Investigation conducted by the Carrier could not substantiate the death. A check with the local County Coroner's Office having jurisdiction over Florence, Alabama and the local paper disclosed no death of an individual named Freda Collins at the time asserted by Claimant. During the handling of the Claim on the property, Claimant submitted a letter asserting that the death involved his uncle and not his sister as claimed by the Carrier.

On May 31, 1985, Claimant requested a 60 day leave of absence due to personal illness and presented a medical statement dated May 30, 1985, from a Dr. Fadul that disclosed that Claimant came to his office complaining of fatigue, depression and drowsiness and Dr. Fadul believed that a leave "might help." The Carrier determined that the statement was insufficient and on June 4, 1985, declined to grant the requested leave, informed Claimant that if more information was furnished, reconsideration would be given to the leave request and further instructed Claimant to return to work. Claimant did not return as instructed.

Claimant's attendance record shows that during the period January 1, 1985, through May 23, 1985, Claimant missed work on 17 days. As earlier noted Claimant did not work after May 23, 1985, and was considered by the Carrier to be absent without permission.

Initially, we find no merit to the Organization's argument that error was committed by the Hearing Officer's failure to postpone the Investigation when Claimant failed to appear. The record establishes that the Carrier took adequate steps in notifying Claimant of the Hearing through use of a certified letter mailed to Claimant's recently changed mailing address (his daughter's), which letter was signed for by Claimant's daughter. No prior postponements were sought nor were other valid reasons for Claimant's nonappearance advanced. Claimant's failure to appear was therefore at his own peril. Third Division Awards 26153; 18395.

With respect to the merits of the claim, our function is to review the record to determine if there is substantial evidence to support the charge against Claimant. If such evidence exists, then we cannot disturb the penalty assessed for that charge unless we find that the Carrier acted in a discriminatory, unjust, unreasonable, capricious or arbitrary fashion so as to constitute an abuse of discretion. See Second Division Award 7325; Third Division Award 21020; Fourth Division Award 3490.

We find the existence of substantial evidence in this record to support the charges. The evidence shows that Claimant reported off due to the death of his sister and subsequent Investigation demonstrated that reason to be false. The fact that Claimant may now dispute what he told the Carrier insofar as who died (i.e., his uncle as opposed to his sister) does not change the result. Corroborated testimony shows that both Claimant and his son stated that the deceased was Claimant's sister. It is not our function in determining whether substantial evidence exists to resolve such disputes, especially since we note that the dispute arises not by virtue of conflicting evidence submitted at the investigation, but as a result of Claimant's subsequently written letter. With respect to the absenteeism charge, clearly, that charge is also supported by substantial evidence in the record. Claimant was absent on numerous days since January 1, 1985, and further did not report to work as instructed after the denial of his leave request.

However, we conclude that on the basis of this record, the Carrier's assessment of dismissal was sufficiently unjust, unreasonable and arbitrary so as to constitute an abuse of its discretion. We take particular note that Claimant had approximately 8 1/2 years of service and the record is devoid of any prior progressive discipline assessed against Claimant. To permit this discharge to stand would cause us to ignore the basic function of discipline as a corrective rather than a punitive measure. Under the circumstances of this case, dismissal was too severe a penalty for the offense. We shall therefore award that Claimant be restored to service on a last chance basis with seniority unimpaired but without compensation for time lost.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1987.