

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That Laborer Larry E. Ewing was unjustly dismissed from the service of the Union Pacific Railroad Company on October 23, 1987.

2. That accordingly, the Union Pacific Railroad Company restore Laborer Larry E. Ewing to service--

- (a) With his seniority rights unimpaired;
- (b) Compensation for all time lost;
- (c) Made whole all vacation rights;
- (d) Paid premium (or hospital dues) for hospital, surgical and medical benefits for all time held out of service;
- (e) Pay premium for his group 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 employee 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 were given due notice of hearing thereon.

The Claimant was dismissed from the service of the Carrier on October 23, 1987, for excessive absenteeism. The Organization contends that the Carrier violated Rule 7, paragraph C of the controlling Agreement which reads:

"No employee will remain away from service without obtaining permission from his foreman, but if sickness or other unavoidable causes prevents him from reporting to his regular post of duty, he shall notify the foreman promptly."

The record indicates that during the period of time the Claimant was charged with being excessively absent June 1 through September 22, 1987, he had incurred four (4) early outs and one (1) day absent without authority and three (3) days sick. By Carrier witness's own testimony, the Claimant had permission for each early out. While the Claimant was not given permission to lay off on the day of absence, he did furnish medical documentation that the Carrier rejected.

Considering the application of the appropriate Rules, it does not appear, on its face, that the Claimant was excessively absent. However, the Board recognizes that the Carrier also took into consideration the Claimant's discipline record which includes a thirty (30) day deferred suspension for failure to protect his assignment and other disciplinary action.


While this Board is reluctant to disturb a Carrier's imposition of discipline, the weight of the evidence does not support the Carrier's contention that Claimant knowingly and willingly violated Company Rules. However, the Board does recognize the Carrier's concern based on the Claimant's past record. In balancing these two considerations, the Board will direct the Carrier to convert the dismissal to a suspension. Claimant shall be reinstated with seniority and other rights unimpaired but without backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1990.