

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer D. Jackson, Chicago, Illinois, was unfairly dismissed from service of the Chicago and Northwestern Transportation Company effective May 25, 1989.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to make Mr. Jackson whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from 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.

As a result of an Investigation held on May 23, 1989 the Claimant was dismissed from service due to his failure to protect his assignment on April 28, 29 and 30, 1989. The Claimant was employed as a Laborer at the Proviso Diesel Ramp.

The Board has reviewed the entire record and finds that the Claimant was totally and completely remise in protecting his assignment. No evidence exists that the Claimant requested a leave of absence. More importantly, no evidence exists that establishes that the Claimant ever attempted to return to his assignment. From the initiation of the Investigation to its conclusion, the Claimant has remained unavailable. It is clear to this Board that the

Claimant provided the Organization with nothing upon which the Organization could refute the substantial evidence produced by the Carrier. Further, the Claimant's record indicates a propensity on his part to absent himself from his assignment. The record also establishes that the Claimant was well aware of the rules regarding attendance and tardiness as indicated by the numerous discussions and prior discipline administered to him. The Board rejects the Organization's argument that the notice for the Investigation was improper in that it was sent to the Claimant's Chicago address while the Carrier knew that the Claimant was in California. The record does not establish that the Claimant's address of record has ever been changed.

The Board finds that the Carrier satisfied its burden of proof by presenting substantial evidence to support the charges and that the Claimant did not provide the Organization with any evidence upon which this Board could modify or reverse the Carrier's assessment of dismissal.

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 9th day of October 1991.