

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 & Oilers
(
(CSX Transportation, Inc. (former Seaboard System
(Railroad)

STATEMENT OF CLAIM:

1. That under the current and controlling agreement Service Attendant E. Terry, I.D. No. 168579 was unjustly dismissed from service on June 26, 1989 after investigation was held on June 12, 1989 by Mr. B.J. Morrow, Terminal Trainmaster, Conducting Officer.

2. That accordingly, Service Attendant E. Terry be restored to service with CSX Transportation, Inc. be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital, life insurance, as well as dental insurance benefits be paid effective June 26, 1989, the payment of ten per cent (10%) interest rate be added thereto and his personal record expunged of any reference to this dismissal from 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 waived right of appearance at hearing thereon.

As a result of a Hearing held on June 12, 1989, the Claimant was dismissed from service. The Claimant was found to have violated Rules 3, 5, and 7 of the Rules and Regulations of the Mechanical Department which states as follows:

"Rule 3:

Disloyalty, dishonesty, desertion, intemperance,
immorality, violations of the law, vicious or
uncivil conduct, insubordination, sleeping on duty

or lying down or in a slouched position with eyes covered, concealed or closed, incompetency, willful neglect, making false statements or concealing facts concerning matters under investigation will subject the offender to dismissal.

Rule 5:

Employees must be at their respective work locations and ready to begin work at the beginning of their bulletined assignment unless excused by proper authority.

Rule 7:

Employees must not absent themselves from their duties without permission from the proper authority. Repeated and chronic absenteeism will subject an employee to investigation and possible discipline. Claims of sickness under false pretenses are recognized as being absent without permission."

The facts of the case disclose that the Claimant requested permission to be absent from work on May 10, 1989, to attend a Court Hearing; that the Claimant failed to return to work as anticipated because he was jailed for failure to pay his court ordered child support payments; that several weeks passed and the Claimant had not contacted the Carrier concerning his absence without permission.

The Organization argues that the Claimant was unjustly denied a postponement of the Hearing. As such, the Organization argues that the Claimant was denied a fair and impartial Hearing.

The Board notes that a review of the record before the Hearing Officer establishes that both the Organization and the Claimant had notice of the Hearing. The record also discloses that the Organization was ready to proceed with the Investigation. The Hearing Officer then heard from two witnesses. The first witness was the General Foreman who testified as to the facts that gave rise to the Claimant's request for a one day leave of absence and his subsequent failure to report to work. The second witness was the wife of the Claimant who testified that she was in touch with a Carrier official and notified the official that the Claimant would be incarcerated until July 8, 1989, well past the date of the Hearing. The Claimant's wife then stated that she did not remember any more about the conversation. The record before the Hearing Officer was simple and complete. There was no indication at the Hearing that a request for postponement was made by the Claimant.

Finding no procedural defects, this Claim is denied.

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.