

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 13022  
Docket No. 12941  
96-2-94-2-90

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists  
( and Aerospace Workers  
PARTIES TO DISPUTE: (  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "(1) Consolidated Rail Corporation arbitrarily and capriciously dismissed Machinist C. T. Smith from service following trial held on August 4, 1993.
- (2) Accordingly Machinist C. T. Smith should be immediately restored to service, paid for all time lost, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust dismissal occurred and have his record cleared of any reference to the charge."

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 employee 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 was employed as a Machinist at Carrier's Collinwood Diesel Terminal and, as of the time of the incident giving rise to this dispute, was on a work release program.

On June 25, 1993, Claimant asked permission to leave work early and Carrier acquiesced. On June 26, Claimant's brother called in marking Claimant off ill until further notice. On July 14, Claimant's Supervisor received an anonymous phone call stating Claimant was not off because of an illness, but that his work release privilege had been revoked. Claimant was in jail from June 26 on.

Following a timely Investigation, Claimant was dismissed.

After reviewing the transcript and the record, it is the decision of this Board that the dismissal will stand. Claimant's record is horrendous, and it is totally based upon his inability to consistently work a 40 hour workweek. This is his third dismissal for absenteeism. He accepted a leniency reinstatement following his first dismissal and was reinstated by a Public Law Board (with pay only for the time withheld from service prior to the issuance of discipline).

The Carrier has been more than lenient in working with Claimant in assisting him in overcoming his inability to work steady. Enough is enough.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.