

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13074
Docket No. 12892
96-2-94-2-35

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Brotherhood of Electrical
(Workers (Local Union No. 214)
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:"CLAIM OF EMPLOYEES:

1. That the Chicago and North Western Transportation Company violated the current Agreement, effective December 1, 1985, in particular Rule 26 (h), when they wrongfully dismissed Electrician David Herrera after an investigation held on March 4, 1993.
2. That the Chicago and North Western Transportation Company promptly reinstate Mr. Herrera to service with all seniority rights unimpaired and make him whole for all lost wages and benefits lost, including but not limited to vacation, insurance, hospitalization, railroad retirement rights and benefits lost, as well as interest on all monies lost at 10%, account of the Carrier's most unjust action, beginning March 14, 1993, and continuing until Mr. Herrera is returned to 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 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 were given due notice of hearing thereon.

As a result of a formal investigation held on March 4, 1993, Claimant was notified that he was being dismissed from service for excessive absenteeism. According to Carrier, his absenteeism had become excessive when he absented himself from his duties on January 24, February 4 and 11, 1993. Claimant began employment on April 8, 1991, as an electrician at the Carrier's California Avenue facility in Chicago, Illinois.

As noted in Second Division Award 12158, attendance for this Carrier is controlled by the Equipment Management Attendance Policy, which is a progressive system where, upon a certain number of occurrences, an employee is first counseled, then holds a conference with his immediate supervisor, is then issued a letter of review, and is finally given a letter of warning placing him in the formal discipline system. The discipline system is also progressive, and provides for a 5 day suspension for a first minor offense after the issuance of a letter of warning, a 10 day suspension for the second minor offense, and dismissal from service "the third time the employee is found guilty of an offense."

A review of the record reveals that an absenteeism conference was held on October 28, 1991, a Performance Review on November 6, 1991, and Claimant was issued a letter of warning placing him in the discipline system on December 13, 1991. Thereafter, Claimant received a five day suspension on April 23, 1992, for absenteeism, and a ten day suspension on January 12, 1993, for failing to properly perform his duties. There was no evidence offered which contested that Claimant was in fact absent on January 24 and February 11, 1993, and had to be sent home on February 4, 1993, for failing to wear the proper footwear to work.

The Board is not convinced that the language of the discipline system requires an employee to be found guilty of an offense three times after his receipt of both a five and ten day suspension, or five times in total, as argued by the Organization, in order for dismissal to be proper. The language of the discipline system at issue suggests that dismissal is appropriate for the third offense, and the intent of progressive discipline would be undermined if an employee was permitted two "free offenses" between receipt of a ten day suspension and dismissal. Neither is there support for the contention that Claimant was not given a fair and impartial Hearing or that the Carrier placed improper reliance upon certain elements of his prior record.

The Board finds that there is substantial evidence in the record to support the charges against the Claimant. Since the Carrier followed its progressive discipline system when dealing with the Claimant's absenteeism, we are unable to conclude that dismissal was an excessive or unreasonable penalty in this case, and the claim is denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.