

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13180

Docket No. 12943

97-2-94-2-93

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 9

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“1. That the Baltimore and Ohio Chicago Terminal Railroad Company, in violation of the controlling agreement, arbitrarily, capriciously and unjustly assessed Electrician R. L. Bradley discipline consisting of dismissal from company service as a result of investigation on August 10, 1992, and;

2. That the Baltimore and Ohio Chicago Terminal Railroad Company return Electrician Bradley to service with his seniority unimpaired and compensate Electrician Bradley for all time lost from August 31, 1992, until he is returned to service; and,

3. That the Baltimore and Ohio Chicago Terminal Railroad Company allow Electrician Bradley all contractual entitlements and benefits including but not limited to; credit for vacation and personal day purposes, credit for Railroad Retirement purposes; health and hospitalization dental and life insurance premiums; and,

4. That the Baltimore and Ohio Chicago Terminal Railroad Company expunge Electrician Bradley's service record of all mention of the unjust discipline.”

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.

The Claimant was subject to an investigative Hearing under the charge of "excessive absenteeism." The charge referred to his responsibility, "if any", in connection with 15 instances of reporting late for work and five absences during the period of January 13 to July 7, 1992. Following the Hearing, the Carrier held the Claimant responsible for 12 occurrences of tardiness, eliminating the remaining three latenesses and the five absences. The assessed disciplinary penalty was dismissal from service.

The Organization argued and the Claimant testified as to the legitimate basis for some of the 12 latenesses, but such was not convincing.

Standing alone, the series of latenesses does not warrant dismissal action. The discipline must, however, be viewed in the context of the Claimant's record. In 1987-88, the Claimant was twice suspended for five days and 30 days, respectively, on charges of being "excessively absent." In 1989, he was dismissed from service for the same reason. Second Division Award 12110 overturned the dismissal on a procedural basis, but included the following in its Findings:

"The Claimant should count himself extremely lucky that he is being allowed to return to his job due to this very technical violation. Had the Board been able to rule on the merits of this case, this Claimant would very likely not be returned to service.

* * *

The Board will find that the Claimant is to be returned to service with seniority rights intact but without any backpay and on a last chance basis."

Following the issuance of Second Division Award 12110, the Claimant returned to service on October 10, 1991. The offenses which are here under review commenced only three months later. The Board finds no basis to modify the Carrier's dismissal action.

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 23rd day of December 1997.