

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13213

Docket No. 13079

98-2-95-2-103

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

(System Council No. 6

(International Brotherhood of Firemen and Oilers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Chesapeake &

(Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That under the current and controlling agreement, Firemen and Oiler V. E. Cheeks, ID No. 626860 was unjustly dismissed from service on September 26, 1994 by C. S. X. Plant Manager J. W. Rhodenberry.**
- 2. That accordingly, Firemen and Oiler V. E. Cheeks be restored to his position with the C. S. X. Transportation, Inc. be made whole for all lost time, with seniority rights unimpaired, vacation, health and welfare, hospital and life insurance benefits be paid effective September 26, 1994 the payment of 10% interest added thereto."**

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.

Claimant was dismissed from the service of the Carrier on September 26, 1994 as a result of a formal Investigation held on September 1, 1994. The Claimant was found to be absent without permission from August 11 through August 19, 1994.

The transcript of the Investigation reveals that the Claimant asked in May of 1994 for time off to seek medical help for his problem. However, Claimant went to jail until being released to the custody of a family member so that the Claimant could enter a treatment center for drug abuse on July 14, 1994. On August 2, 1994, Claimant was released from the treatment center after becoming involved with a female on the grounds of the center.

Claimant did not return to work and when the Carrier found this out, the charges which led to the dismissal were filed.

The Organization filed this claim on the basis the Carrier failed to meet its burden of proof, and that the discipline was excessive and an abuse of managerial discretion.

The record is clear that the Claimant was absent without authority. Claimant had almost 14 years of service at the time of dismissal. This is the ninth disciplinary action against the Claimant.

The record is void of any evidence to overturn the action of the Carrier.

AWARD

Claim denied.

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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 26th day of February 1998.