Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13852
Docket No. 13732
05-2-04-2-9

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(BNSF Railway Company

STATEMENT OF CLAIM:

"1. That the Burlington Northern Santa Fe Railroad Company violated the current agreement, effective September 1, 1974, as amended, in particular Rule 40, when they unjustly dismissed Mechanical Department employee Arthur L. Travis on February 5, 2003.

2. That the Burlington Northern Santa Fe Railroad Company failed to provide Mechanical Department employee Arthur L. Travis with a fair and impartial investigation as required by Rule 40.

3. That accordingly, the Burlington Northern Santa Fe Railroad Company be ordered to immediately reinstate Mechanical Department employee Arthur L. Travis to its service with all seniority rights unimpaired and to make him whole for all wages, rights and benefits lost, including but not limited to: vacation, insurance, hospitalization and Railroad Retirement rights resulting form his removal from Carrier service. Further, that any and all reference to this dismissal, including all correspondence, be removed from Mr. Travis's personal record.

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.

This is a second disciplinary action taken against the Claimant for alleged violation of the Attendance Policy. This instant case involves the period from October 1 though October 31, 2002. A Notice was sent to the Claimant under date of November 18, 2002. Following a postponement, the investigation was held on January 21, 2003. Subsequently, by letter dated February 5, 2003 the Claimant was found guilty as charged and was issued a Level V Dismissal from service.

The Organization's arguments for procedural violations have been carefully reviewed and are rejected. We are not persuaded that Rule 40 was violated. As this is a companion case to Docket 13731, our position stated therein is equally applicable to these facts.

The Board has studied this dismissal carefully. We have considered the Claimant's eleven year record with the Carrier. Most importantly, we have considered that the instant case involved October 1 though October 31, 2002; that the Claimant did indicate by October 9, 2002 that he wanted medical assistance; that he obtained the forms and held them until October 28; and that he was granted a medical leave from October 29, 2002 until November 25, 2002. While all of that appears factual, it is also a fact that the Claimant was guilty of the charges. He was absent fourteen times and late three times. The Claimant has had a history of counseling and discipline (Public Law Board 6522, Award No. 20), a poor

disciplinary record which indicates progressive discipline, and no change in his conduct.

There is substantial probative evidence of guilt. The Carrier must have employees it can rely on to cover their assigned duties. The Board has always found that when the Carrier has proven continued attendance problems, even when attributable to medical reasons, this constitutes a proper right to discipline. While depression may very well be mitigating in some circumstances; when, as here, it has remained unattended and resulted in continual and chronic absenteeism, the Carrier has the right to utilize progressive discipline up to and including dismissal.

This record is an unfortunate one, but not the fault of the Carrier. The Carrier has proven the Claimant violated the Rules. It has provided sufficient evidence to demonstrate progressive discipline. The Carrier has determined that dismissal is appropriate. This Board has no authority to second guess the Carrier's judgment and reinstate the Claimant based upon his clinical problem. That authority rests solely with the Carrier to reinstate the Claimant. Our authority is to determine whether the Carrier proved its alleged absenteeism and disciplined appropriately. While we commend the Claimant for obtaining help, this Board can not find the Carrier's actions improper. The Claim must be denied.

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 3rd day of May 2005.