

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

Parties to Dispute: ( System Federation No. 91, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employee:

1. That Upgraded Carman Apprentice B. C. Johnson was dismissed from service in violation of the current agreement on June 13, 1977, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
  - (a) Restore him to service with seniority and all employee rights unimpaired.
  - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
  - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld fr 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 employe or employes involved in this dispute are respectively carrier and employe 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, Barry C. Johnson, an Upgraded Carman Apprentice at Carrier's South Louisville Shops, was dismissed from service of the Carrier on June 13, 1977, following an investigation held on May 12, 1977, in which Claimant was adjudged guilty of being absent from duty without permission on May 2 and 3, 1977; failure to perform any service on May 4, 1977, after answering roll call; refusal to comply with instructions given by his Foreman; and leaving Company property without permission.

Upon a careful and thorough examination of the record, we find nothing improper with regard to Carrier having conducted the investigation with Claimant in absentia. Claimant was given proper notification of the hearing as to the date, time, and place and was advised of his rights regarding witnesses and representation. For

whatever reasons, Claimant chose not to attend the hearing nor to advise either the Organization or the Carrier in advance of the scheduled hearing date that he would be unable to attend. We believe therefore, the Claimant received a fair and impartial investigation.

Facts developed in the investigation reveal that, in addition to the specific charges alleged in the instant case, in the time Claimant was employed with the Carrier he had established an extremely poor absenteeism and tardiness record. Evidence of record further reflects that on several occasions over the time of Claimant's employ, the Carrier attempted to rehabilitate Claimant through counselling and written warnings advising him to improve his attendance and to stay on his assigned job or face more drastic action if such improvement was not forthcoming. These warnings went unheeded thus leading to Claimant's eventual dismissal from service.


Evidence of record substantially supports the charges against Claimant and we note further, Claimant's own admission regarding his wrongful actions on the dates in question. We sympathize with Claimant's constellation of personal problems experienced at the time precedent to and subsequently following his dismissal from service. These problems were not known to the Carrier at the time and were only revealed approximately ten (10) months after Claimant's dismissal. However, such personal problems cannot be allowed to mitigate in any way the discipline imposed in the instant case as the record clearly shows Claimant had exhibited a pattern of absenteeism and tardiness wholly unacceptable prior to the onset of these particular personal problems.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of January 1980.