

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the Current and Controlling Agreement Service Attendant D. R. Ramsey was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on July 20, 1978, after a formal investigation was held in the office of R. H. Hayes, Conducting Officer on July 10, 1978.
2. That accordingly, D. R. Ramsey, Service Attendant, be restored to his regular assignment at South Louisville Shops with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all lost time, effective July 20, 1978.

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.

At the time of dismissal, claimant was employed as a service attendant with a seniority date of August 3, 1977.

On June 28, 1978, claimant was charged with being absent from duty without permission from a proper authority from June 11 through June 21, 1978, and with excessive absenteeism since January 1, 1978. The letter also detailed the dates that the claimant was late or absent. An investigation was set for July 10. As a result of the investigation, claimant was notified of his dismissal via letter dated July 20.

The organization argues initially that the procedure was defective because the carrier held the hearing without the claimant present. They argued that the claimant misunderstood the hearing notice and came to the hearing at 9:00 a.m. instead of 8:00 a.m. It is their contention that although the hearing was concluded, the hearing officer should have reconvened the hearing or rescheduled it for another date. We find no validity to this argument. The claimant should have been well aware of the time, place and date of the hearing. The June 28

notice of investigation clearly indicated the hearing was at 8:00 a.m. The claimant had signed a receipt for this notice and the receipt was reproduced in the record. Further, there is nothing in the record that indicates his absence was due to factors beyond his control or that a postponement was requested by his representative at the hearing. It is well established that failure of a claimant to appear at an investigation authorizes the carrier to proceed without him and that such failure to appear is at the claimant's own peril.

Regarding the merits, the record contains substantial evidence to support the charge. The claimant's foreman N. D. Parrish testified that claimant did not have permission to be absent between June 11 and June 21. He also testified that the letter of charge which detailed Mr. Ramsey's absences since January 1, 1978, was correct. Mr. Parrish testified that by his calculation the claimant was absent or tardy 28% of the time since January 1.

Regarding the quantum of discipline, the Board recognizes its proper role. The Board should not substitute its judgment for the carrier's in regard to the appropriate penalty unless it can be shown the discipline is arbitrary, capricious or excessive. In reviewing the record, we do not see the claimant has received the benefit of any warnings or previous suspension. We believe the carrier should have at least warned the claimant some time prior to dismissal that his continued absences would result in severe disciplinary action. It is the Board's belief that permanent dismissal must be considered excessive for this type of offense when the carrier has failed to engage in any previous corrective action such as warnings or suspensions. A lengthy suspension would have been an appropriate penalty, therefore we will direct the reinstatement of the claimant with no back pay. We also direct that the claimant be made aware that this is an opportunity to correct his work habits which, at best, were deplorable. We urge him to take advantage of this chance to show himself responsive to disciplinary efforts and worthy of continued employment. He must realize the carrier has a right to expect regular attendance. A reoccurrence of his previous behavior will undoubtedly be considered unfortunate evidence that another chance, such as this, would not be appropriate.

A W A R D

Discipline modified to the extent indicated in the findings.

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 7th day of January, 1981.