

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, Laborer J. Bly, Marshalltown, Iowa, was ~~unfairly~~ dismissed from service of the Chicago and Northwestern Transportation Company, effective October 3, 1988.

2. That accordingly, the Chicago and Northwestern Transportation Company be ordered to make Mr. Bly whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his 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 employe or employes involved in this dispute are respectively carrier and employes 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.

On September 2, 1988, Claimant was notified to appear for a formal Investigation on September 7, 1988, charged with:

"Your responsibility for excessive absenteeism while employed as a Laborer, first shift, 7:00 A.M. to 3:00 P.M. at the Marshalltown Diesel Shop. Your absenteeism became excessive when you were again absent on August 29, 1988. ***"

At Claimant's request the Investigation was postponed until September 23, 1988.

The Investigation began at 10:06 A.M. on September 23, 1988, however Claimant was not present. Claimant's Local Chairman was present and stated in the Hearing.

"I would like to object to this investigation account of Mr. Bly cannot be here today."

Q. You have no notice of why Mr. Bly could not be here.

A. No I don't.

Q. Well if you have no other objections, we will continue with the investigation.

A. Okay."

Carrier's Shop Manager testified that Claimant on September 22, 1988, requested another postponement in order he said to obtain representation. Carrier's Assistant Division Manager Mechanical in Boone, Iowa, in the Division Headquarters, was contacted and his advice was that Claimant had already had one postponement for the purpose of obtaining representation, and the Carrier is unaware of any efforts on the Claimant's behalf to obtain that representation. His request was refused.

The Hearing Officer then asked the Local Chairman the following question.

"Q. Mr. Hinmon did Mr. Bly contact you for a postponement?

A. No contact with Mr. Bly since the first postponement."

Therefore Claimant's duly authorized representative was present. Claimant chose to stay away at his own risk.

On July 5, 1988, Claimant was given a letter by the Shop Manager from the Assistant Division Mechanical, which stated:

"In reviewing both your personal record and attendance record, I find you have an inordinate number of absences attributed to personal illness. Your alleged health problems have resulted in discussion with your immediate supervisor, as well as with Shop Manager, Tad Volkman. On April 8, 1988, you received a

letter from Assistant Vice President and Division Manager, Mr. G. F. Maybee, placing you in the Discipline System for excessive absenteeism. To date, you have shown a deterioration in your attendance record, rather than the improvement I would have expected. Because of your alleged health problems and your lack of improvement it will now be necessary for you, when absenting yourself in the future, to personally contact either Tad Volkman, Shop Manager, A. C. Steinhebel, General Foreman, or W. G. Bachman, General Foreman, within one (1) hour of your starting time. At any time your absence is due to personal illness, it will be necessary for you to obtain substantiated proof from a qualified person detailing the nature of your medical problem and the treatment you received."

There is no question that Claimant was absent on August 29, 1988. He called the Foreman at 6:15 A.M., August 29, 1988, and reported off because he had a flat tire. The record shows that Claimant lived in walking distance of the Shop. The Shop Manager asked Claimant didn't he have a spare tire. Claimant wouldn't answer him.

On October 1, 1987, the Equipment Management Department put into effect an absenteeism policy. Claimant was familiar with this policy. The record reveals that the Carrier complied with the policy in their dealings with the Claimant.

The Organization's contention is that Carrier was in violation of Rule 21 of the current Agreement in that Claimant was not notified in writing of the precise charge. Their contention being that his absentee record back to October 1, 1987, was entered into the record.

We agree with the language in Award 68 of Public Law Board 3166, reading in part:

"The charge of excessive absenteeism inherently connotes that the Carrier must review Claimant's attendance over a reasonable period of time to determine if he has been absent an abnormal number of days. In the notice of charges, the Carrier need not enumerate each absence. NRAB Second Division Award No. 9480 (Doering). Therefore, the investigation is not limited to the triggering absence but the Carrier properly inquired into Claimant's attendance record over a reasonable period of time."


It is the opinion of this Board that Claimant was well represented by his Organization and that Carrier had given Claimant every opportunity to improve his attendance record but he made no attempt to do so.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devar - Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1990.