

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12798
Docket No. 12669
94-2-93-2-54

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM: "Claim of Employees:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier) violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation the Carrier unjustly and improperly dismissed from service Proviso Diesel Shop Machinist employee H. Green (hereinafter referred to as "Claimant").

2. That accordingly, the Carrier be ordered to
- (a) Restore Claimant to service with all seniority and vacation rights unimpaired.
 - (b) Compensate Claimant for all time lost from service commencing March 6, 1992.
 - (c) Make Claimant whole for all health and welfare and insurance benefits lost while dismissed from service.
 - (d) Expunge from Claimant's personal record any and all reference to the investigation proceedings and the discipline subsequently imposed."

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 waived right of appearance at hearing thereon.

At the time this dispute arose, Claimant was assigned to a Machinist position in the Carrier's Proviso Diesel Shop in Northlake, Illinois. On August 25, 26, 29, 30, and 31, 1990, Claimant was absent from his position without notifying or obtaining permission from Carrier. By letter of August 30, 1990, Claimant was notified to attend a formal investigation concerning his absences. After several postponements, the investigation was ultimately held on February 27, 1992. Following the investigation Carrier notified Claimant of his dismissal from service, effective March 6, 1992.

On March 30, 1992, Claimant's Local Chairman appealed the discipline. That appeal was declined. The claim was subsequently processed up to and including the highest Carrier officer responsible for handling such matters. The claim was discussed in conference on the property on August 18, 1992, after which it remained unresolved.

The Organization has protested that Claimant was not accorded a fair and impartial hearing. A review of the record indicates that Carrier's hearing officer was in the main impartial and conducted himself objectively. Both Carrier and the Hearing Officer should be advised, however, that in many circumstances, introduction of evidence by the Hearing Officer rather than by Carrier's witness might well constitute a fatal procedural flaw. In this instance, however, the remainder of the investigation contained no such blunders. Accordingly, the Board does not find, on balance, that Claimant was deprived of procedural due process in this case.

Upon reviewing the transcript of the investigation, the Board notes that Claimant admitted his absence without permission on the dates in question. Accordingly, there is no dispute concerning his commission of the violation. Remaining, however, is the matter of quantum of discipline assessed. On this point, Carrier refers the Board to the published Carrier discipline policy. The Discipline System reads in pertinent part:

"The discipline system will be utilized...for frequent or continued minor offenses committed by and employee who has demonstrated an unwillingness to change, and who, there-after, has received either a formal written warning of possible future discipline or has been assessed a five day suspension under (1)(b) hereof....

(1) Actual Suspension From Service For Five Calendar Days

...(b) This method of discipline may also be used without prior issuance of a Letter of Warning in serious cases such as, but not limited to, when an employee disregards his responsibilities by substantially depriving the Company of the employee's services by sleeping on duty....

(2) Actual Suspension From Service For Ten Calendar Days

If the employee has previously received a five day suspension, this method of discipline will be used the second time the employee is found guilty of a minor offense.

(3) Dismissal From Service

This method of discipline will be used in the most serious cases.... In other cases, if the employee has previously received both a five day suspension and a ten day suspension, this method will be used the third time the employee is found guilty of an offense."

Claimant's discipline record indicates a pattern of absenteeism. He received two letters of review regarding his absenteeism prior to being placed on the Discipline System. The year after he was placed on the Discipline System, he received a five-day actual suspension and a ten-day actual suspension for failure to protect his assignment. Two years later he received another letter of review regarding his excessive absenteeism. Claimant's pattern of absence -- primarily for personal illness -- continued unabated until his dismissal in March of 1992.

It is not unreasonable for Carrier to expect an employee to attend work on a regular basis. While Claimant has offered various reasons for his poor attendance record, the fact remains that he appears to be unwilling or unable to protect his assignment in a reliable manner. Under the circumstances, Carrier's assessment of the ultimate penalty of dismissal was neither unreasonable nor excessive.

AWARD

Claim denied.

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O R D E R

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 9th day of December 1994.