

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That the Grand Trunk Western Railroad Company violated the controlling Agreement when it improperly discharged Machinist G. D. Price from its service effective July 27, 1981, without holding an investigation.
2. That the Grand Trunk Western Railroad Company violated the controlling Agreement when it belatedly held an investigation which was unfair and prejudiced.
3. That accordingly the Grand Trunk Western Railroad Company be ordered to restore Machinist G. D. Price to service with all rights unimpaired and make him whole for all losses resulting from the improper discharge.

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.

The significant events relative to this dispute began on July 24, 1981, when it was contended that the Claimant refused to follow the orders of his supervisors and threatened the life of one of them. On that same date, the Claimant was given a letter which dismissed him from the service effective July 27, 1981.

On July 29, 1981, two letters were issued to the Claimant; one served to cancel the July 24, 1981 dismissal letter. The other letter: "Confirmed that you were suspended from service. Pending hearing, effective July 27, 1981." This letter also listed a number of other incidents in which the Claimant was allegedly involved on July 24th, and stated that a hearing was scheduled for the purpose of determining the Claimant's responsibility, if any, for those events.

The investigative hearing was held on August 18, 1981 and, as a result, a letter was sent to the Claimant on September 1, 1981, which removed him from service effective July 27, 1981.

The thrust of the Organization contention is that the Carrier violated the controlling rule of the applicable agreement when it failed to hold a trial to determine all of the facts, including the Claimant's responsibility for the alleged offense. The Organization maintains that, even though the termination letter was rescinded, the Carrier committed a fatal contractual error. The Claimant was not paid for the days between the date of dismissal (July 27, 1981) and the withdrawal of the dismissal letter (July 29, 1981). The Organization holds that because the employee was not paid for the days in question, it is apparent that the Carrier did not consider the Claimant to still be an employee at the time that the Carrier cancelled its discharge letter, thereby indicating that the Carrier intended to dismiss the employee.

For its part, the Carrier does not dispute that it was in error when the letter of July 24, 1981 was issued. The July 29th letter, which cancelled the July 24th letter, was written because the Carrier realized that the rule used to terminate the Claimant's employment was no longer operative and that the effective controlling rule provided that the discipline cannot be imposed without an investigative hearing. Accordingly, it argues that because the error was corrected on July 29, 1981 and the Claimant was given a full investigation as required by the rule, the error was not prejudicial to Claimant's rights. The Carrier also argues that the merits of the case clearly call for a dismissal of the Claimant.

The Board has thoroughly reviewed the voluminous and detailed record and submissions provided by the parties to this dispute. The threshold issue is whether the letter of July 29, 1981, served to correct the dismissal letter of July 24, 1981, thereby avoiding a fatal contractual violation.

Clearly, the July 24, 1981 letter was violative of the controlling rule as recognized by the two letters which followed on July 29, 1981. On the day that he was dismissed, the employee was denied the most fundamental right that the contract provides to him -- the right to be heard -- before judgments are made which may serve to deprive him of employment. Certainly, there may be technical violations that for various and sundry reasons have little impact upon due process. The Board would agree that such nonprejudicial errors should not be used as a vehicle to overturn discipline. However, such is not the case before us. The nature of the error strikes at the heart of the employee protective provision of the contract for which both parties share equal enforcement responsibility. We, therefore, conclude that the improper letter of July 24, 1981 so grievously erred and prejudiced the Claimant's cause that it foreclosed any substantive action based on the events that led up to the July 24 letter. The claim, therefore, is sustained, to the extent that the claimant shall be restored to the service, with seniority rights unimpaired, but without any compensation for time lost while out of service.

A W A R D

Claim sustained in accordance with the Findings.

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Award No. 9587
Docket No. 9795
2-GTW-MA-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board



Nancy J. Dever / Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1983.