

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13147
Docket No. 13006
97-2-95-2-29

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

**(International Association of Machinists and
(Aerospace Workers**
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the ‘Carrier’) violated Rule 40 of the Controlling Agreement, Form 2640-Std., between the Atchison, Topeka and Santa Fe Railway Company and its employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the ‘Organization’) when they unjustly dismissed Topeka, Kansas Machinist Philip L. Hara (hereinafter referred to as the ‘Claimant’) for allegedly being absent without the proper leave as the result of an improper investigation.

Accordingly, we request that the Claimant be exonerated in this matter, that he be made whole for his wage and benefit loss due to his improper dismissal, and that he be reinstated with all rights and benefits unimpaired. Furthermore, we request that the Claimant’s personal record be expunged of all reference to this matter.”

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 were given due notice of hearing thereon.

The essential facts in this case are not in dispute. Prior to his dismissal, Claimant was a Machinist at Carrier's Topeka, Kansas, locomotive facility. Claimant was on an approved medical leave of absence until November 17, 1993. He was approved to return to service by his physician as of that date. However, rather than returning to service, Claimant took five weeks vacation, which ended December 17, 1993. In a letter dated January 4, 1994, Carrier advised the Claimant that his employment was terminated because he had been absent without leave from December 20, 1993 (his scheduled date to return to work) and January 4, 1994. By letter of January 25, 1994 Claimant requested an Investigatory Hearing into his dismissal. He was notified that the Hearing would be held at 9:00 A.M. on February 18, 1994. Claimant did not appear for the Hearing. By letter of March 10, 1994, Claimant was notified that he was dismissed from Carrier's service.

While the Organization has protested Carrier's holding the Investigation in absentia, there is no reason to question Carrier's decision to do so in this case. The Board notes that Claimant's initial absence was coincidental with his required transfer to Topeka from California. Furthermore, it was Claimant who requested the Investigatory Hearing. A "Return Receipt" card confirms that Claimant received the notification of the Hearing. Yet, Claimant elected not to appear for the Hearing, and not to notify either Carrier or his Organization of the reason for his absence, either before or after the scheduled Investigation.

In light of the foregoing, the Board finds no procedural error on the part of Carrier. Moreover, we find no basis for overturning Carrier's assessment of the ultimate penalty of dismissal.

AWARD

Claim denied.

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ORDER

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 8th day of September 1997.