

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13364
Docket No. 13263
99-2-97-2-27**

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(The Union Pacific Railroad Company (former Chicago
(North Western Transportation Company)**

STATEMENT OF CLAIM:

"1. That the Union Pacific Railroad (formerly the Chicago & North Western Transportation Company which hereinafter will be referred to as the 'Carrier') violated the applicable provisions of Rule 35 of the July 1, 1921 Joint Agreement as specifically amended by agreement dated July 1, 1979, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly dismissed from service Proviso Diesel Shop Machinist K.D. Ingram (hereinafter referred to as the '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 with January 10, 1996.**
- (c) Make Claimant whole for all health and welfare and insurance benefits for all time held out of 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 were given due notice of hearing thereon.

By letter dated November 30, 1995, Claimant, a Machinist at Carrier's Proviso Diesel Shop in Melrose Park, Illinois, was instructed to attend an Investigation on charges of sleeping while on duty, insubordinate behavior in refusing to take a reasonable cause drug test, and leaving the property without permission. The Investigation was postponed and rescheduled once at the request of the Local Chairman and twice at Claimant's request. The Investigation was held on January 5, 1996; Claimant did not appear. As a result of the Investigation, Claimant was found guilty of the charges and, in compliance with Carrier's Discipline Assessment Table, Claimant was upgraded to a Level 5 discipline resulting in his dismissal from service effective January 10, 1996.

This claim protests such discipline based solely upon a denial of due process by failing to afford Claimant a fair and impartial Hearing as required by Rule 35, and failing to apprise him of the precise charge, relying upon Third Division Award 11794; Second Division Award 10438. The record establishes that Claimant knew of the time and location of the Hearing and informed the Organization's representative that he intended to come in that morning to sign a resignation prior to the commencement of the Hearing, but failed to show up.

Carrier argues that Claimant was informed of the specific charges, had knowledge of the incident in question, and knowingly waived his right to attend his Hearing and present a defense to the charges by failing to show up at the Investigation. Carrier contends that it made every reasonable effort to accommodate Claimant by

granting repeated postponements of the Hearing at his request and gave him adequate time to prepare a defense to the charges. Carrier asserts that its right to impose discipline based upon evidence adduced at Hearings held *in absentia* has repeatedly been upheld both on and off the property, citing Special Board of Adjustment No. 279, Awards 622, 673, 674, 675; Public Law Board No. 4746, Awards 29, 33; Public Law Board No. 2766, Awards 125, 127; Public Law Board No. 3443, Award 1; Public Law Board No. 4599, Award 22.

We have carefully reviewed the record and conclude that there was no violation of due process. The notice of charge was sufficiently specific to advise Claimant of the subject matter of the Investigation and he had notice of the time and place of Hearing. His failure to attend was at his peril and does not amount to a procedural deficiency. See Public Law Board No. 4746, Award 29. Carrier has sustained its burden of proving that Claimant was guilty of the charges and that his dismissal was consistent with the progressive disciplinary system then in effect on the property. Accordingly, there is no basis for overturning the discipline assessed.

AWARD

Claim denied.

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 23rd day of February 1999.