

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13640

Docket No. 13504

01-2-99-2-106

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(International Association of Machinists
(and Aerospace Workers**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “(1) That the Union Pacific Railroad Company (hereinafter referred to as the Carrier or Company) violated Rules 32 of the current Controlling Agreement dated June 1, 1960, as subsequently amended, between the International Association of Machinists and the Missouri Pacific Railroad Company, (Employee’s Exhibit ‘H’-2) when it unjustly dismissed Machinist Quimby Loughmiller (hereinafter referred to as claimant) from service of the Carrier.**
- (2) That the Carrier reinstate the Claimant, compensate him for all lost time and give him credit for benefits lost as a result of his unjust dismissal.”**

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.

On December 7, 1998, the Carrier notified the Claimant to report for an Investigation on January 19, 1999, concerning his alleged failure to comply with instructions issued by the Director of Regional Operations in a letter dated November 6, 1998. The Claimant did not appear at the Hearing and the Hearing proceeded as scheduled in absentia. On January 26, 1999, the Carrier notified the Claimant that he had been found guilty of the charge and had been dismissed from service.

The record reflects that the Notice of Investigation was mailed to the Claimant certified, return receipt requested. The record also contains the return receipt purporting to bear the Claimant's signature. No postponement of the Hearing was requested. The Local Chairman and Vice Local Chairman attended the Hearing and represented the Claimant to the best of their abilities. The Carrier proceeded in accordance with the Agreement when it held the Hearing in absentia.

The record further reflects that on November 6, 1998, the Carrier's Manager of Administration sent the Claimant a letter directing him to provide certain medical information in connection with the Carrier's need to determine the Claimant's fitness for duty. The record reflects that the Claimant signed a postal receipt for the letter on November 25, 1998, but the Claimant did not comply with the directive and did not contact the Manager of Administration. Indeed, it appears that the Claimant received the November 6, 1998, letter and the Notice of Investigation but failed to respond to either.

The Organization contends that the Claimant was involved in the Carrier's EAP program and therefore, his failure to respond to the directive and the Notice of Investigation should be excused. The record, however, reflects that the Claimant was no longer involved in the EAP as of July 5 and had no contact with the EAP since that date, i.e., six months before the Hearing. Accordingly, we conclude that the Carrier proved the charge by substantial evidence and that the claim must be denied.

AWARD

Claim denied.

Form 1
Page 3

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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 6th day of August, 2001.

